

Liquidated Damages are intended only to cover damages suffered by Owner as a result of delay and shall not affect the right of Owner to terminate the Agreement pursuant to Section 22.2(a)(iii) or its remedies provided for in Section 22.2 as a result of such termination.

13.2 Performance Liquidated Damages. If the Unit does not meet the Net Unit Electrical Output Guarantee due to Contractor's fault, Owner's remedy for such failure shall be to recover from Contractor Performance Liquidated Damages of two thousand dollars (\$2,000) for each whole KWe that the Net Unit Electrical Output, as demonstrated by a Net Unit Electrical Output Test, is below the Net Unit Electrical Output Guarantee. The Parties agree that it would be extremely difficult and impracticable under presently known and anticipated facts and circumstances to ascertain and fix the actual damages Owner would incur in the event that the Unit fails to meet the Net Unit Electrical Output Guarantee, and, accordingly Owner's remedy for such failure shall be to recover from Contractor as liquidated damages, and not as a penalty, the Performance Liquidated Damages. In the event that Contractor has paid the Performance Liquidated Damages and as of the end of the first Operational Cycle (or the second Operational Cycle if long lead equipment or components were involved in the remedy) has been able to achieve the Net Unit Electrical Output Guarantee or has improved the Net Unit Electrical Output, Contractor shall be entitled to receive a refund of all or the applicable portion of the Performance Liquidated Damages paid, based on the difference between the Performance Liquidated Damages paid and the Performance Liquidated Damages due following Contractor's repair, replacement, adjustment or modifications to the Unit as demonstrated by a Performance Test, minus seven hundred fifty dollars (\$750) per MW below the Net Unit Electrical Output Guarantee for each Day that the Unit operated below the Net Unit Electrical Output Guarantee. In no event shall the total Performance Liquidated Damages due under this Agreement exceed seven and one-half percent (7.5%) of the Contract Price per Unit (the "Performance Liquidated Damages Cap").

13.3 Performance Bonus. Following Substantial Completion, the Net Unit Electrical Output for the Unit will be measured when the Unit is at one hundred percent (100%) reactor power to determine an average Net Unit Electrical Output. If, as of the completion of the second Operational Cycle (a) the Unit capacity factor is above eighty percent (80%); and (b) the average Net Unit Electrical Output achieved by a Unit exceeds the Net Unit Electrical Output Guarantee, then Owner shall pay to Contractor a bonus (the "Performance Bonus") of five million dollars (\$5,000,000) for each whole MWe the Unit achieves above 1,117 MWe. For the purposes of the foregoing, "capacity factor" shall mean the ratio of the megawatt-hours produced compared to the megawatt-hours the Unit is capable of producing at rated power during an Operational Cycle, stated as a percentage, and any hours that the Unit is not producing megawatt-hours that are not attributable to the fault of Contractor shall be included as hours of production.

13.4 Payment. Delay Liquidated Damages and Performance Liquidated Damages, if due for a Unit, shall be due and payable by Contractor to Owner within thirty (30) Days following agreement by the Parties that such amount is due. The Performance Bonus, if due for a Unit, shall be paid within thirty (30) Days following the end of the second Operational Cycle of such Unit. If the payment of any such amount is disputed, then once the dispute is resolved, the additional amount due, if any, shall be paid, or the excess amount paid, if any, shall be refunded, by the applicable Party, within thirty (30) Days after the date of the final resolution, together

with interest at a rate equal to the Prime Rate plus one percent (1%) per annum, applied from the original due date of the payment, until paid (or in the case of any overpayment, from the date paid until refunded by the Party).

ARTICLE 14 – WARRANTY

14.1 Equipment.

(a) Equipment Warranty.

(i) Contractor warrants that the Equipment and each Unit shall be free from defects in design, workmanship and material and shall conform to the Specifications (the "Equipment Warranty").

(ii) The Equipment Warranty shall commence upon the date scheduled for Substantial Completion of a Unit in the Project Schedule as of October 1, 2008 plus the number of Days of delay caused by Contractor and shall expire on the date that is twenty-four (24) months after that date for such Unit (the "Standard Equipment Warranty Period"); provided, however, if Owner exercises its option in Section 14.5 for any item of Equipment, the Warranty Period for such item of Equipment shall be the applicable Extended Equipment Warranty Period (as defined in Section 14.5).

(iii) In the event that after the pouring of first safety-related concrete for the Unit but prior to Substantial Completion of such Unit, there is any delay in the performance of the Work caused by Owner or its Personnel or resulting from an Uncontrollable Circumstance, Contractor shall use commercially reasonable efforts to obtain an extension of the equipment warranty(ies) from Subcontractors for that Equipment designated by Owner so that Contractor can extend the Standard Equipment Warranty Period. The cost to Owner of such extended Equipment Warranty(ies), if obtained, shall be included in the Change Order to which Contractor shall be entitled as a result of such delay(s). For such Change Order, Contractor shall only markup the amount charged by the Subcontractor for such extended Equipment Warranty(ies) for Westinghouse's SGA and Stone & Webster's G&A and multipliers set forth in Exhibit G, and shall not include a markup for Pro Rata Profit. Any Contractor costs to administer such extended Equipment Warranties or for Contractor to provide the extended warranty without Subcontractor backing shall include Westinghouse's SGA and Stone & Webster's G&A and multipliers set forth in Exhibit G, and Pro Rata Profit consistent with the Profit applicable to the Consortium Member providing the Equipment.

(iv) The Equipment Warranty does not apply to consumables and Equipment and material such as, but not limited to, gaskets, seals, filters, electronic tubes, packing, fuses, transistors and light bulbs which, by normal industry practices would be expected to be replaced during the Standard Equipment Warranty Period.

(v) For Equipment which is placed into service prior to Substantial Completion, the Equipment Warranty shall commence upon such date when an item is placed into service and shall expire on the date that is twenty four (24) months after such date. If, however, any such item of Equipment is placed into service prior to Substantial Completion and

used by Contractor to support its performance of the Work, the Equipment Warranty shall commence upon the Substantial Completion Date of the First Unit and shall expire on the date that is twenty four (24) months after such date. Contractor shall give notice to Owner within five (5) Business Days after such an item has been placed into service.

(b) Remedy. If, for non-conforming Equipment discovered during the applicable Warranty Period, Owner promptly notifies Contractor, Contractor shall perform such repair or replacement as required to meet the Equipment Warranty. The repaired or replaced part shall be further warranted to be free from defects in workmanship and material for a period of one (1) year from the date of repair or replacement, until the end of the then-current Operational Cycle (for items that cannot be verified during normal operations) or until the expiration of the Standard Equipment Warranty Period, whichever is later; provided that in no event shall such warranty extend beyond five (5) years from the commencement of the Standard Equipment Warranty Period and provided further that the terms of the Extended Equipment Warranty shall govern with respect to such matters for each item of Equipment covered by an Extended Equipment Warranty. The decision to repair or replace shall be made by Contractor. Removal and reinstallation of the non-conforming Equipment shall be performed by Contractor at its expense; provided that, Owner shall provide working access to the Equipment (which shall include removing, disassembly, replacing and/or reinstalling adjacent or interfering Equipment, components, materials, systems or structures in the Unit to the extent necessary to permit Contractor to perform its warranty obligation on the non-conforming Equipment), it being understood that such removal, disassembly, replacing and/or reinstalling shall not adversely affect any warranties and, at the request of Contractor, shall furnish, without cost to Contractor, plant support personnel and facilities to assist in the removal, reinstallation, repair and other activities occasioned by this warranty as specified in Section 14.1(e). Should investigation by Contractor reveal that a defect is not covered by the Equipment Warranty, Owner agrees to reimburse Contractor for its expenses in connection therewith.

(c) Warranty Work Deferral. At Owner's option, Warranty Work that impacts operation of the Facility may be deferred until the time of the Unit's next regularly scheduled maintenance outage and the Warranty provisions hereunder shall apply notwithstanding that such outage occurs after the end of the Standard Equipment Warranty Period. If Contractor advises Owner that deferral of the Warranty Work can reasonably be expected to result in damage to the Unit and/or Equipment which occurs after Contractor's advice and results from deferral of such Warranty Work, Owner may elect to use the Unit and/or Equipment at its risk. In no event may Owner defer the Warranty Work beyond eighteen (18) months from the date it would have been performed by Contractor without Owner's deferral.

(d) Additional Owner Obligations. As long as any Equipment supplied hereunder is subject to warranty, Owner shall:

- (i) Afford Contractor an opportunity to review Owner's system of developing and recording data related to Facility performance;
- (ii) Provide, without cost to Contractor, any required decontamination to reasonable limits that shall allow Contractor to perform its obligations under this Article 14

and all necessary personnel and facilities for the removal, reinstallation, repair and other Site activities that may be occasioned by the presence of radioactive contamination;

(iii) Provide authorized personnel of Contractor and its Subcontractors reasonable access to the Facility should Contractor decide to observe the manner in which the Facility is operated and maintained;

(iv) Provide authorized personnel of Contractor and its Subcontractors reasonable access to operation and maintenance records of Owner; and

(v) Afford Contractor at its expense the opportunity to attend and be heard during the presentations to any Government Authority relating to the Facility and Equipment performance.

Should Owner not provide such of the foregoing as are required by Contractor, such action shall cause Contractor's obligations to terminate with respect to the particular claimed defect to the extent that Owner's failure caused prejudice to Contractor.

(e) Working Access to Equipment and Plant Support Activities to be Provided by Owner. The plant support personnel and facilities to be provided by Owner in accordance with Section 14.1(b) are as follows:

(i) operations support to establish the required plant conditions for the repairs;

(ii) make the plant systems, structures, and components available and placed in the proper configuration;

(iii) provide the valve clearances and tag-outs necessary;

(iv) provide the necessary licensed operators in the control room and containment as required by the COL;

(v) establish and maintain appropriate and acceptable industrial safety conditions in accordance with Laws, Good Industry Practices, and utility policy such that reasonably unencumbered access to the required work areas is enabled for all personnel;

(vi) as appropriate, provide body harnesses and/or personal flotation devices in sufficient quantities such that reasonably unencumbered access to the required work areas is enabled for all personnel;

(vii) provide safe scaffolding meeting applicable OSHA standards (as required);

(viii) provide suitable ambient lighting;

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(ix) provide free and unobstructed access to the Site, including maintained storage areas and roadways. Floor conditions shall be suitable for crane and truck operation;

(x) provide access such as remove/reinstall cubicle plugs and other related plant facilities, such as piping, ductwork, cable trays, platforms, insulation, etc.;

(xi) provide logistics support and labor for moving equipment/materials into and out of the plant and shipping;

(xii) provide lay down area(s) for equipment storage, set-up, staging and operation. Area requirements shall depend on the scope of services performed;

(xiii) provide areas for storage of low specific activity and clean equipment boxes and/or cargo containers. The area(s) shall vary depending on storage configurations and scope of services;

(xiv) establish and maintain appropriate and acceptable radiological conditions in accordance with Laws, Good Industry Practices, and utility policy such that reasonably unencumbered access to the required work areas is enabled for all personnel;

(xv) provide anti-contamination clothing, lockers, change area, dosimetry, health physics and radiation protection service and badging for Site access as typically required;

(xvi) provide official whole body exposure data for Contractor personnel upon personnel departure from the Site;

(xvii) provide Gamma isotopic analysis to determine radioactivity of waste;

(xviii) provide breathing air and respiratory protection as necessary;

(xix) provide plant compressed air as required;

(xx) provide air for ventilation;

(xxi) provide 110V, 220V and 480V power as required;

(xxii) provide plant and deionized water;

(xxiii) make available to Contractor, and maintain in an operable condition those hand tools, special tools, and calibrated equipment necessary;

(xxiv) allow access to machine shop and welding facilities, and hot tool crib access, as required;

(xxv) provide crane operators, including polar crane availability on an as scheduled basis, and any other personnel necessary to complete the tasks outside of Contractor scope;

(xxvi) provide for consumables such as wipes and rags, and disposal of all contaminated materials;

(xxvii) provide QA/QC coverage as required in the Site approved procedures; and

(xxviii) provide outside phone lines, sanitation facilities and drinking water.

(f) Conditions. Such repair or replacement shall constitute complete fulfillment of Contractor obligation under the Equipment Warranty, and upon the expiration of the applicable Warranty Period, all such obligations shall terminate.

14.2 Services Warranty. Contractor warrants that the Services shall be performed by qualified persons and using competent professional knowledge and judgment and shall conform to Good Industry Practices and the requirements of this Agreement (the "Services Warranty"). If any portion of the Services fails to comply with this Services Warranty and Owner promptly notifies Contractor of such non-conformance along with evidence which reasonably demonstrates Contractor's culpability, Contractor shall promptly re-perform the non-conforming Services and any additional Work required under the Equipment Warranty without additional compensation from Owner. The Services Warranty Period shall be concurrent with the Standard Equipment Warranty Period (the "Services Warranty Period").

At Owner's option, Warranty Work may be deferred until the time of the Unit's next regularly scheduled maintenance outage and the Warranty provisions hereunder shall apply notwithstanding that such outage occurs after the end of the Services Warranty Period. If Contractor advises Owner that deferral of the Warranty Work can reasonably be expected to result in damage to the Unit and/or Equipment which occurs after Contractor's advice and results from deferral of such Warranty Work, Owner may elect to use the Unit and/or Equipment at its risk. In no event may Owner defer the Warranty Work beyond eighteen (18) months from the date it would have been performed by Contractor without Owner's deferral.

14.3 Warranty of Title. Contractor represents and warrants that the Work, including the Equipment furnished by it and its Subcontractors that become part of the Facility or are furnished to Owner as spare parts shall be legally and beneficially owned by Owner free from any Liens (other than Liens created by the actions of Owner, including non-payment). In the event of any nonconformity with this warranty, Contractor, at its own expense, upon written notice of such failure, shall indemnify, defend and hold harmless Owner from the consequences of such defect in title and such obligations shall survive the expiration, cancellation or termination of this Agreement.

14.4 Limitations and Disclaimers.

(a) THE WARRANTIES AND GUARANTEES AND RELATED REMEDIES SET FORTH IN THIS ARTICLE 14 ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES AND RELATED REMEDIES WHETHER STATUTORY, EXPRESS OR IMPLIED (INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE IN TRADE) AND WHETHER CLAIMS BY OWNER ARE BASED IN CONTRACT OR IN TORT (INCLUDING FAULT, NEGLIGENCE OR STRICT LIABILITY).

(b) Any warranties not expressly made herein are expressly waived by Owner.

(c) Notwithstanding the foregoing provisions of this Article 14, Contractor shall have no liability hereunder for non-conformance or failure of Equipment, or material, or performance, that results, in whole or in part, from:

(i) Operation of the Equipment outside of the design basis of the Equipment or integrated system.

(ii) Following Turnover of a system or structure, improper use, or abnormal handling, storage, operation or maintenance of the Equipment or material therein, or operation outside the guidelines of the Specifications, including employment at any time for purposes other than those for which such Equipment and material are intended, or under other abnormal conditions or incompetent supervision.

(iii) Alteration, abuse or misuse of the Equipment by persons other than Contractor, its Subcontractors and the employees and agents of either.

(iv) Any operation or maintenance of the Equipment that is not in accordance with the Unit Operating Procedures and Maintenance Procedures.

(v) Operation by personnel not qualified in accordance with Section 3.6(g).

(d) Contractor shall be relieved from fulfilling its warranty obligations as specified in this Article 14 if:

(i) A Nuclear Incident occurs through no fault of Contractor and gives rise to the non-conformance, and

(ii) All the consequences, including radiation, of such Nuclear Incident preventing Contractor from performing such warranty obligations are not removed within the applicable Warranty Period.

14.5 Extended Equipment Warranty. No later than six (6) months following issuance of the Full Notice to Proceed, Contractor shall provide to Owner an option for extended warranties for the steam generator, reactor vessel head, reactor cooling pumps, pressurizer, main turbine, main turbine generator and main step-up transformers. At the time of providing the option, Contractor also shall provide information as to the duration of such warranties, the price for such extended warranties (which shall be developed using the same pricing methodology as the pricing for the Equipment to which such extended warranties apply) and any special terms applicable to such extended warranties (each, an "Extended Equipment Warranty"). Owner shall have the right to exercise its option for any such Extended Equipment Warranty within the time period specified for the exercise of the option by the Equipment vendor. The terms of such Extended Equipment Warranties shall be set forth in Exhibit W. The time period beyond the Standard Equipment Warranty Period to which each such Extended Warranty applies is referred to as the "Extended Equipment Warranty Period" for such piece of Equipment.

14.6 Limitation on Warranty Liability. Contractor's total liability under or in connection with the liabilities in this Article shall not exceed the amount provided in Section 17.2; provided, that such limitation shall not apply to Contractor's warranty of title under Section 14.3.

ARTICLE 15 – INDEMNITY

15.1 Contractor Indemnity. Except with respect to a Nuclear Incident, Contractor shall indemnify, defend and hold harmless Owner, its Affiliates, and their respective partners, shareholders, officers, directors, and lenders from and against Third Party Claims and costs and expenses associated therewith (including attorneys' fees) from any injury of or death to natural persons, or damage to or destruction of third party property (i.e., property other than the Facility or other property belonging to Owner) to the extent arising from (i) the negligent or willful acts or omissions of Contractor or its Personnel or Invitees acting within the scope of their employment or for which applicable Law would otherwise hold Contractor liable for such acts or omissions, (ii) any Liens arising from nonpayment to any Subcontractor in connection with the Work, provided that Contractor has been paid in accordance with this Agreement, or (iii) the release on or from the Site of any Hazardous Materials, but only to the extent such release is due to Contractor's or a Subcontractor's or their Personnel's or Invitees' negligence or willful misconduct while acting within the scope of their employment or for which applicable Law would otherwise hold Contractor liable for such acts or omissions. Contractor's obligations in this Section 15.1 are limited to the proceeds of the insurances required to be provided hereunder, provided that if the insurance program is a Contractor controlled insurance program, the limit shall be the amount of the proceeds from such insurance (or the proceeds which would have been received, if Contractor had not failed to obtain such insurance). Contractor's obligations in this Section 15.1 are further conditioned upon Owner giving Contractor prompt notice of any known claims for which it seeks indemnity hereunder (along with documentation which reasonably evidences Contractor's responsibility thereof) and Owner providing such assistance and cooperation in the defense of indemnified claims as Contractor shall reasonably request as set forth in more detail in Section 15.5. In the event that Owner or Owner Interests incur any cost, loss, damage or expense arising out of or resulting from any Third Party Claim for which

Contractor is required to indemnify Owner or Owner Interests pursuant to this Section 15.2, Contractor shall promptly reimburse Owner for such cost, loss, damage or expense.

15.2 Owner's Indemnity. Except with respect to a Nuclear Incident, and subject to limitations on Santee Cooper's obligations as a matter of South Carolina law, Owner shall indemnify, defend and hold harmless Contractor and Contractor Interests from and against Third Party Claims and costs and expenses associated therewith (including attorneys' fees) from any injury of or death to natural persons, and damage to or destruction of third-party property (i.e., property other than that belonging to Contractor and Contractor Interests) to the extent arising from (i) the negligent or willful acts or omissions of Owner or its Personnel or Invitees (other than Contractor or its Personnel or its Invitees) acting within the scope of their employment or for which applicable Law would otherwise hold Owner liable for such acts or omissions; and (ii) any contamination of the environment or injury to natural resources as a result of any Hazardous Materials on, at or under the Site to the extent such contamination or injury occurs through the fault, negligence, willful misconduct or strict liability of Owner or its Personnel or Invitees (other than Contractor or Contractor's Personnel or Invitees) acting within the scope of their employment or for which applicable Law would otherwise hold Owner liable for such acts or omissions. Owner obligations in this Section 15.2 are limited to the proceeds of the insurances required to be provided hereunder, provided that if the insurance program is an OCIP, the limit shall be the amount of the proceeds from such insurance (or the proceeds which would have been received, if Owner had not failed to obtain such insurance). Owner's obligations in this Section 15.2 are further conditioned upon Contractor giving Owner prompt notice of any claims for which it seeks indemnity hereunder (along with documentation which reasonably evidences Owner's responsibility thereof) and Contractor providing such assistance and cooperation in the defense of indemnified claims as Owner shall reasonably request as set forth in more detail in Section 15.5. In the event that Contractor or Contractor Interests incur any cost, loss, damage or expense arising out of or resulting from any Third Party Claim for which Owner is required to indemnify Contractor or Contractor Interests pursuant to this Section 15.2, Owner shall promptly reimburse Contractor for such cost, loss, damage or expense.

15.3 Intellectual Property Indemnity. Contractor shall assume at its sole option and expense, the settlement or defense of any and all claims, demands, costs, suits, actions, proceedings, fines and penalties (and interest thereon) brought against Owner to the extent based on a Third Party Claim that any Facility, Unit, Work and/or Equipment furnished by Contractor results in an infringement, or claim of infringement by Contractor, of any patent, trademark, copyright or any other similar intellectual property protection issued by a duly authorized Government Authority of the United States, Canada, a European Union country, or another country where the Equipment was manufactured in connection with the Facility, a Unit, the Work and/or Equipment furnished by Contractor hereunder, except where the same resulted from following directions, specifications, drawings, plans or procedures prepared by Owner or by third parties for Owner and selected by Owner. If a suit is brought against Contractor based on any Facility, Unit, Work and/or Equipment supplied by Contractor which implements any such Owner directions, specifications, drawings plans or procedures, Owner shall protect Contractor to the same extent that Contractor has agreed to protect Owner hereunder.

In the event any Facility, Unit, Work and/or Equipment so defended is held to constitute infringement or its use is enjoined, Contractor shall, at its own expense and option, either: (a) procure for Owner the right to continue to use such Facility, Unit, Work and/or Equipment; (b) re-perform the Work or replace the Facility, Unit and/or Equipment with substantially equivalent noninfringing Facility, Unit, Work and/or Equipment; or (c) modify the Facility, Unit, Work and/or Equipment so that it becomes noninfringing; provided, however, that such Work re-performed and Facility, Unit and/or Equipment replaced or modified conforms to the requirements of this Agreement.

THIS IS AN EXCLUSIVE STATEMENT RELATING TO INTELLECTUAL PROPERTY RIGHTS AND ALL THE REMEDIES OF THE PARTIES RELATING THERETO.

15.4 Owner's Nuclear Incident Indemnity.

(a) Notwithstanding any other provision to the contrary, Owner shall, without cost to Contractor Interests, obtain and maintain "financial protection" and an "indemnification agreement", for protection against liability for Nuclear Incidents (including master worker coverage), both in such form and amount as shall satisfy the requirements of Section 170 of the Atomic Energy Act of 1954, as amended. In the event that the nuclear liability protection contemplated by Section 170 of the Atomic Energy Act of 1954, as amended, is repealed, changed, or is not renewed, Owner shall maintain in effect, to the extent available on commercially reasonable terms, liability protections through governmental indemnity, limitation of liability and/or insurance of comparable coverage which shall not result in a material impairment of the protection afforded Contractor Interests by such nuclear liability protection which is in effect as of the Effective Date, taking into account the availability and cost of such coverage, customary practice in the United States commercial nuclear utility industry for plants of similar size and character of the Facility and other relevant factors in light of the then existing conditions. To the extent available on commercially reasonable terms, Owner shall ensure that Contractor Interests are included in the omnibus definition of "insured" under such alternate insurance coverage or are otherwise included as an additional insured at no cost to Contractor Interests.

(b) Owner shall prior to the initiation of Work at the Site and without cost to Contractor, obtain and maintain property insurance for protection against liability for Nuclear Incident on the Facility and the existing adjacent nuclear generation facility in a form and amount required by the Nuclear Regulatory Commission and the current customary industry practice from time to time, providing protection against loss or damage to the Facility and the existing adjacent nuclear generation facility. Such insurance shall cover Contractor Interests, as their interests may appear. Owner hereby waives all rights of recovery and subrogation on behalf of itself and its insurers against Contractor Interests for any loss or damage covered by such property insurance during the Work and thereafter, including the deductibles under any insurance policy.

(c) None of Contractor Interests shall be liable to Owner or its insurers or any other party for (i) any on-Site property (and existing nuclear facility at the V.C. Summer Station) loss or damage due to any nuclear energy hazard, and (ii) losses or damages caused by reason of unavailability of the nuclear power and existing adjacent nuclear station, or by reason of

shutdowns of the station or other facilities or service interruptions (including loss of profits or revenue, inventory or use charges, cost of replacement power, cost of capital or claims by customers) or for any other indirect, special, incidental, punitive or consequential loss, damage or injury, whether or not based on any claim or a negligent or faulty act or strict liability due to any nuclear energy hazard. To the extent Owner or its insurers recover damages from a third party for damage due to the nuclear energy hazard to which the foregoing waivers apply, Owner shall indemnify Contractor Interests against any liability which such third party recovers over from Contractor and/or its Subcontractors for any such loss or damage. In the event that Contractor Interests incur any cost, loss, damage or expense arising out of or resulting from a claim by a third party based on Owner's recovery of such damages, Owner shall promptly reimburse Contractor for such cost, loss, damage or expense. As used in this Section 15.4, the term "nuclear energy hazard" shall mean radioactive, toxic, explosive or other hazardous properties of "source material", "special nuclear material", or "by-product material" as such terms are defined in the Atomic Energy Act of 1954, as amended. Owner on behalf of itself and its insurers, hereby waives any right of recovery and subrogation against Contractor and Contractor Interests for any loss or damage (whether direct, indirect, consequential or otherwise) whether or not based on any claim or a negligent or faulty act or strict liability, due to any nuclear energy hazard, during the performance of the Work and thereafter.

(d) As used in this Section 15.4, the term "on-Site property" means any property at the site of a nuclear facility as defined in the nuclear liability policy for the Site for nuclear liability and indemnity purposes; the term "damage" means loss, damage or loss of use; the term "liable" or "liability" means liability of any kind at any time, whether in contract, tort (including negligence) or otherwise.

(e) The provisions hereof providing for limitations of or protection against Contractor's liability shall survive termination of this Agreement or completion of the Work hereunder.

15.5 Indemnity Procedures.

(a) The indemnifying Party shall have the right to conduct and control, through counsel of its own choosing, reasonably acceptable to the indemnified Party, any Third Party Claim, provided that, upon acceptance of the indemnity obligations hereunder, the indemnifying Party shall waive any right to protest or challenge its indemnity obligations. The indemnifying Party shall keep the indemnified Party fully informed in the conduct of the proceeding. The indemnified Party shall be entitled to participate at its cost in any such action.

(b) The indemnified Party may, at its election, participate in the defense thereof at its sole cost and expense; provided, however, that if (i) the indemnifying Party shall fail to defend any Third Party Claim, (ii) the Parties mutually agree in writing to allow the indemnified Party to assume the defense of such Third Party Claim and forego any indemnity claimed under this Article, (iii) in the reasonable opinion of legal counsel for the indemnified Party, such Third Party Claim involves the potential imposition of a criminal liability on the indemnified Party, its directors, officers, employees or agents, or (iv) in the reasonable opinion of legal counsel for the indemnified Party, an actual or potential conflict of interest exists where it is advisable for such indemnified Party to be represented by separate counsel, then the

indemnified Party shall be entitled to control and assume responsibility for the defense of such Third Party Claim, at the cost and expense of the indemnifying Party (except in the case of (ii) above, in which the indemnified Party agrees to forego the indemnity). The indemnifying Party may, in any event, participate in such proceedings at its own cost and expense. The indemnified Party shall not have the right to settle without the written consent of the indemnifying Party (which consent shall not be unreasonably withheld), unless, in the written opinion of the indemnified Party's legal counsel, such claim is meritorious.

(c) The indemnifying Party, in the defense of any such litigation, other proceeding or other claim, shall have the right in its sole discretion to settle such Third Party Claim only if (i) settlement involves only the payment of money and execution of appropriate releases of the indemnified Party, (ii) there is no finding or admission of any violation of Law or violation of the rights of the indemnified Party, and (iii) the indemnified Party shall have no liability with respect to such compromise or settlement. Otherwise, no such Third Party Claim shall be settled or agreed to without the prior written consent of the indemnified Party, which shall not be unreasonably withheld.

(d) The indemnified Party and the indemnifying Party (i) shall fully cooperate in good faith in connection with such defense and shall cause their legal counsel and accountants to do the same; (ii) shall make available to the other Party all relevant books, records, and information (in such Party's control) during normal business hours; and (iii) shall furnish to each other, at the indemnifying Party's expense, such other assistance as the other Party may reasonably require in connection with such defense, including making employees of the indemnified Parties available to testify and assist others in testifying in any such proceedings.

ARTICLE 16 – INSURANCE

16.1 Phase I Insurance Requirements.

(a) Except as otherwise provided hereunder, Contractor agrees to furnish and maintain at all times during the course of the Phase I Work to be performed hereunder, Worker's Compensation, liability and other insurance coverage required hereunder and in the amounts as follows:

(i) Worker's Compensation – Statutory. Coverage shall include U.S. Longshoremen's and Harbor Workers Act coverage where applicable. The insurance purchased pursuant to this Section 16.1(a)(i) shall include an "All States" endorsement.

(ii) Employer's Liability, including an "All States" endorsement – one million dollars (\$1,000,000). Coverage shall include U.S. Longshoremen's and Harbor Workers Act coverage where applicable.

(iii) Commercial General Liability, (excluding professional liability) including Contractual, Independent Contractors, - Bodily Injury and Property Damage Combined Single Limit – two million dollars (\$2,000,000) Each Occurrence, two million dollars (\$2,000,000) Aggregate, Personal Injury – two million dollars (\$2,000,000). Products and Completed Operations – two million dollars (\$2,000,000).

(iv) Automobile Liability coverage including owned, hired, and non-owned automotive equipment used in connection with the insured operation - Bodily Injury and Property Damage Combined – two million dollars (\$2,000,000) Each Occurrence. Owner shall provide similar coverage for any of its owned, hired and non-owned automotive equipment.

(v) Contractor's Equipment Coverage – in the amount of the value of the equipment through insurance or self insurance.

(vi) Pollution Liability on a project basis, which includes the sudden or accidental release of any material that may be considered a pollutant at or around the Site, as a result of the Work done by Contractor or any tier Subcontractor – one million dollars (\$1,000,000) Each Occurrence, two million dollars (\$2,000,000) Aggregate. Notwithstanding the foregoing, this coverage shall be taken out within ninety (90) Days after the Effective Date.

(vii) Open Cargo Insurance must be obtained on materials and equipment to be transported to the Site.

(viii) Umbrella Form Excess Liability Insurance with a coverage limit of ten million dollars (\$10,000,000).

(ix) Professional Liability on a project basis with a coverage limit of ten million dollars (\$10,000,000) per claim and aggregate for the Work. Notwithstanding the foregoing, this coverage shall be taken out within ninety (90) Days after the Effective Date.

(b) Builder's Risk Insurance, if needed, as determined by Owner in consultation with Contractor, shall be purchased by Owner at limits and coverages and other provisions as enumerated in Section 16.2(a)(ii), naming Owner, Contractor, and Subcontractors as additional insureds. The liability of Contractor for any loss or damage to any equipment or materials, Work, completed Facility and surrounding Owner property shall be as provided in Section 16.2(a)(ii). Should Owner decide not to procure such coverage until the commencement of Phase II, Contractor's liability for any loss or damage during Phase I, whether based on contract, tort (including fault, negligence and strict liability) or otherwise, shall not exceed one hundred thousand dollars (\$100,000) for any occurrence as if Owner had procured a standard Builder's Risk policy subject to the limitations in Section 16.2(a)(ii). Contractor's liability for the payment of such amount shall not be reimbursable hereunder. Owner shall reimburse Contractor on a Time and Materials Basis to remedy such loss or damage that exceed such amount, whether based on contract, tort (including fault, negligence and strict liability) or otherwise.

16.2 Phase II Insurance Requirements.

(a) For Phase II, Owner shall have the option of implementing an Owner Controlled Insurance Program ("OCIP"), as set forth in Exhibit U. If Owner decides not to implement the OCIP, Contractor will have the right to implement a Contractor-Controlled Insurance Program ("CCIP"), implementing the provisions of Exhibit U. Contractor shall be reimbursed for the CCIP by Owner on a Time and Materials Basis. The Parties recognize that Exhibit U is written for an OCIP, and will need to be modified accordingly if a CCIP is to be

implemented. If neither an OCIP or a CCIP is implemented, each of Owner and Contractor, as applicable, shall maintain the coverages specified in Section 16.1, with the following exceptions, such coverages to be reimbursed by Owner on a Time and Materials Basis:

(i) the coverage limit for the Umbrella Excess Liability shall be increased to one hundred million dollars (\$100,000,000) per occurrence and aggregate.

(ii) Builder's Risk Insurance, if not already obtained, shall be obtained at limits determined appropriate by the Parties. Such Builder's Risk policy shall (A) name Contractor and all Subcontractors as additional insureds (without having any liability for the payment of premiums); (B) cover all risks of loss or damage to the Facility (I) during construction, and (II) if not covered by the Open Cargo Insurance, during transportation of any materials and equipment, and (III) during storage, (IV) during the Work, and (V) until replaced by Owner's Operating Property coverages, and (VI) with limits of coverage equal to the maximum credible loss to the Facility as agreed to by the Parties; and (C) provide coverage for resultant damage due to any error in design, defects in equipment or material or faulty workmanship; and (D) provide delay in start-up coverage (subject to a commercially reasonable deductible), if available on a commercially reasonable basis. Any recovery under the delay in start-up coverage resulting from an event that gives rise to a covered claim under this policy shall reduce any Delay Liquidated Damages by the same amount. Notwithstanding any other provision to the contrary, Owner on behalf of itself and the insurer hereby waives all rights of recovery and subrogation against Contractor and its Subcontractors, and their Affiliates and Personnel, including any losses within the deductibles and any excess losses; provided that Contractor shall be liable for Owner's deductible under its property insurance policy(ies); provided further, and notwithstanding any other provision to the contrary, that the liability of Contractor and Contractor Interests for any loss or damage to any equipment, materials, Work, completed Facility and surrounding Owner property shall be limited to claims arising to the extent of Contractor's negligence and shall in no event exceed one hundred thousand dollars (\$100,000) for any occurrence. Contractor's liability for the payment of such amount shall not be reimbursable hereunder. Owner shall reimburse Contractor on a Time and Materials Basis to remedy such loss or damage that exceed such amount, whether based on contract, tort (including fault, negligence and strict liability) or otherwise; provided, however, should any such loss or damage not be covered by the builder's risk coverage provided hereunder and such coverage would have been in effect but for the dishonest, criminal or fraudulent acts of Contractor or its Personnel (for which Contractor is liable under applicable Law) which cause such coverage to be denied to Owner due to a violation of such policy conditions, Owner shall not be obligated to reimburse Contractor for such corrective work. Any such denial of insurance coverage that allegedly results from any such insurance condition may be disputed and/or appealed by Contractor at law or in equity, and Owner shall reasonably cooperate with Contractor in connection with any such dispute or appeal. The foregoing provisions are for the sole benefit of Owner, and the Parties do not intend such provisions to be for the benefit of any third party, including without limitation any insurer.

(b) Regardless of whether Owner or Contractor adopts an OCIP or CCIP, as applicable, Contractor shall be responsible for maintaining the following insurance coverages during Phase II:

(i) Professional Liability: Contractor shall continue to carry Professional Liability Insurance described under Section 16.1(a)(ix).

(ii) Pollution Liability: Contractor shall continue to carry Pollution Liability Insurance described under Section 16.1(a)(vi) with an increased coverage limit of two million dollars (\$2,000,000) per occurrence and four million dollars (\$4,000,000) in the aggregate.

(iii) Employment Practices Liability: Contractor shall carry Employment Practices Liability on a project basis with a coverage limit of five million dollars (\$5,000,000) per occurrence and in the aggregate.

16.3 Provisions Applicable to all Coverages.

(a) After the execution of this Agreement and prior to the commencement of any Work, each Party shall have on file with the other party (and in the case of Owner, Owner's Supplier Relations Department) the applicable insurance certificate(s). Such certificate(s) shall provide that thirty (30) Days written notice be given to the other Party prior to any material change or cancellation of the insurance. Other than the OCIP or CCIP, as applicable, the Builder's Risk Insurance and Owner's Operating Property coverages, each Party shall name the other Party, its subsidiaries and their successors and assigns, as additional insured (except for Worker's Compensation and Professional Liability and Pollution Liability coverage) for their vicarious liability arising out of such Party's negligent operations or such Party shall be covered under the omnibus provisions thereof. For the OCIP or CCIP, as applicable, and Owner's Operating Property coverage, each Party and Contractor Interests shall be named as an additional insured thereon, at no cost to Contractor. All policies shall be written to include a waiver of subrogation in favor of the other Party and its Affiliates and Contractor Interests during the performance of the Work and thereafter. Owner's policies for Builder's Risk Insurance and other coverages obtained pursuant to the OCIP shall be subject to the Contractor's review and approval, which shall not be unreasonably withheld. Contractor's policies procured under this Agreement shall be subject to Owner's review, in the event of a claim seeking damages from Contractor and/or Owner in excess of one million dollars (\$1,000,000).

(b) All such insurance shall be with sound insurance companies which have an AM Best Rating of A- VII as the minimum and authorized to do business in the state where the Work is to be performed. None of the liability policies shall have any "other insurance" clause or language which would jeopardize the primacy of Contractor's insurance with respect to Owner's self-insured retention or excess insurance. The above Contractor requirements may be met by both Consortium Members providing separate certificates. Any such limits of coverages may be met in one or more layers of coverage.

(c) Neither a failure of a Party to provide the required certificate of insurance nor such Party's submission of a certificate of insurance not in conformance with the insurance requirements stated herein shall relieve such Party from the obligation to have in force the required insurance coverages.

(d) Each Party is responsible for any deductibles associated with its policies of insurance or its self-insured retentions, except as otherwise provided hereunder.

(e) Contractor understands that Owner may have an administrator on-Site at all times in which Contractor or its Personnel are at the Site. Contractor shall interface and cooperate with Owner's administrator. Additionally, Contractor shall follow any recommendations made by the NRC, Nuclear Electric Insurance Limited ("NEIL"), the Institute of Nuclear Power Operators ("INPO") and American Nuclear Insurers ("ANI").

ARTICLE 17 – LIMITATION OF LIABILITY

17.1 No Consequential Damages. EXCEPT TO THE EXTENT THE PAYMENT OF LIQUIDATED DAMAGES COULD OTHERWISE BE DEEMED TO BE SUCH DAMAGES, IN NO EVENT SHALL CONTRACTOR OR CONTRACTOR INTERESTS BE LIABLE, WHETHER BASED ON CONTRACT (INCLUDING BREACH, WARRANTY, INDEMNITY, ETC.) OR TORT (INCLUDING FAULT, NEGLIGENCE AND STRICT LIABILITY), UNDER ANY WARRANTY OR OTHERWISE, RELATING TO OR ARISING OUT OF THE WORK OR THIS AGREEMENT, FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, PENAL, OR INCIDENTAL LOSS, DAMAGE OR INJURY, INCLUDING ANY SUCH DAMAGES WHICH RESULT FROM LOSS OF USE OF PROPERTY, EQUIPMENT OR SYSTEMS, LOSS BY REASON OF FACILITY SHUTDOWN OR SERVICE INTERRUPTION, COSTS OF CAPITAL OR EXPENSES THEREOF, LOSS OF PROFITS OR REVENUES OR THE LOSS OF USE THEREOF, OR COST OF PURCHASED OR REPLACEMENT POWER (INCLUDING ADDITIONAL EXPENSES INCURRED IN USING EXISTING POWER FACILITIES) OR FROM CLAIMS OF CUSTOMERS.

17.2 Maximum Total Liability; Time Limitation. WITH RESPECT TO A UNIT, NOTWITHSTANDING ANY OTHER PROVISION TO THE CONTRARY, CONTRACTOR'S AND CONTRACTOR INTERESTS' TOTAL AGGREGATE LIABILITY UNDER THIS AGREEMENT, ARISING OUT OF OR IN CONNECTION WITH THE WORK OR THIS AGREEMENT, WHETHER BASED ON CONTRACT (INCLUDING BREACH, WARRANTY, INDEMNITY, ETC.), TORT (INCLUDING FAULT, NEGLIGENCE OR STRICT LIABILITY) OR OTHERWISE, SHALL NOT EXCEED AN AGGREGATE AMOUNT EQUAL TO TWENTY-FIVE PERCENT (25%) OF THE PAYMENTS FOR SUCH UNIT THAT HAVE BEEN MADE TO CONTRACTOR AS OF THE DATE OF THE EVENT OR CIRCUMSTANCE GIVING RISE TO THE CLAIM (THE "MAXIMUM LIABILITY AMOUNT"). FOR THE PURPOSE OF DETERMINING WHETHER THE MAXIMUM LIABILITY AMOUNT HAS BEEN MET, INSURANCE PROCEEDS RECEIVED FROM THE INSURANCE POLICIES REQUIRED TO BE MAINTAINED UNDER THIS AGREEMENT SHALL NOT BE INCLUDED. THE MAXIMUM LIABILITY AMOUNT SHALL NOT APPLY TO A BREACH OF THE WARRANTY OF TITLE SET FORTH IN SECTION 14.3; PROVIDED, HOWEVER, THAT IN NO EVENT SHALL CONTRACTOR'S LIABILITY FOR A BREACH OF THE WARRANTY OF TITLE EXCEED THE AMOUNT OF THE CONTRACT PRICE PAID TO CONTRACTOR AS OF THE DATE OF SUCH BREACH. IN NO EVENT MAY ANY CLAIM BY OWNER AGAINST CONTRACTOR ARISING OUT OF OR IN CONNECTION WITH THE WORK OR THIS AGREEMENT,

WHETHER BASED ON CONTRACT (INCLUDING BREACH, WARRANTY, INDEMNITY, ETC.), TORT (INCLUDING FAULT, NEGLIGENCE OR STRICT LIABILITY) OR OTHERWISE BE BROUGHT, WITH RESPECT TO A UNIT, MORE THAN TWO (2) YEARS AFTER THE END OF THE STANDARD EQUIPMENT WARRANTY PERIOD (EXCEPT FOR ANY LIABILITY ASSOCIATED WITH BREACH OF AN EXTENDED EQUIPMENT WARRANTY, WHICH MUST BE BROUGHT NO LATER THAN SIX (6) MONTHS AFTER THE END OF THE EXTENDED EQUIPMENT WARRANTY PERIOD APPLICABLE TO SUCH ITEM OF EQUIPMENT).

17.3 Division of Liability.

(a) The Consortium Members agree that they are jointly and severally liable for Contractor's performance obligations hereunder, except that in no event shall Stone & Webster have or assume any loss, damage or liability for or in connection with the supply, design, analyses or operation of the reactor vessel, reactor vessel head, reactor internals, reactor coolant pumps, steam generators, pressurizer, squib valves, or main reactor coolant loop piping, whether arising in contract (including breach, warranty, indemnity or otherwise) and however caused, including fault, negligence, strict liability or otherwise.

(b) SCE&G and Santee Cooper agree that they are jointly and severally liable for Owner's obligations hereunder, to the extent such joint and several liability does not conflict with South Carolina Law applicable to Santee Cooper. To the extent the prior sentence conflicts with South Carolina Law, then notwithstanding that both SCE&G and Santee Cooper are named in this Agreement as "Owner", as between Contractor and Owner, SCE&G shall be solely liable for the obligations and liabilities of Owner hereunder.

ARTICLE 18 – LIENS

18.1 Liens. Contractor shall keep the Facility, the Site and the Equipment free from Liens (other than liens arising from acts of Owner or Owner's failure to pay amounts due to Contractor), and shall promptly notify Owner of any known Liens filed against the Facility, the Site, or the Equipment and any structures comprising the Facility or located on the Site. If Owner seeks Contractor's indemnification for any Lien, Owner shall:

(a) Give Contractor prompt written notice of any Lien of which it has knowledge; and applicable documentation regarding the Lien;

(b) Cooperate in the defense of litigation relating to the Lien; and

(c) Give Contractor sole control of the defense and settlement, to the extent of Contractor's liability, for the Lien if Contractor confirms in writing an obligation to indemnify Owner with respect to the Lien.

18.2 Discharge or Bond. Contractor shall take prompt steps to discharge or bond any Lien filed against the Facility, any Equipment, and any structures comprising the Facility or located on the Site by any Subcontractor based on a claim for payment by Contractor in connection with the Work. Contractor shall have the option of providing an indemnity to Owner

in lieu of discharging or providing a bond, for up to a nine (9) month period to allow Contractor a reasonable time to resolve the cause of the filing of the Lien. If Contractor fails to indemnify, discharge or promptly bond any Lien, Owner shall have the right, upon notifying Contractor in writing and providing Contractor reasonable time to indemnify, discharge or bond the Lien, to take any and all reasonable actions and steps to satisfy, defend settle or otherwise remove the Lien at Contractor's expense, including reasonable attorneys' fees, costs and expenses. Owner shall have the right to recover these expenses from Contractor. Contractor shall have the right to contest any Lien, provided it first provides to Owner the indemnity provided for above or it may provide the lien holder, a court or other third Person, as applicable, a bond or other assurances of payment necessary to remove the Lien related to the Work from the Site and the Facility in accordance with the Laws of the State of South Carolina.

ARTICLE 19 – PROPRIETARY DATA

19.1 Protection of Owner Proprietary Data.

(a) Any Proprietary Data of an Owner disclosed to Contractor shall be marked "Proprietary" or the like on each page in which the respective party claims a proprietary or confidential interest therein (or for electronic data, on the opening screen of such data). If Contractor receives information which it recognizes as being Proprietary Data, but which has not been marked as such, it shall promptly notify Owner and mark the information as Proprietary Data.

(b) In the use of any Owner Proprietary Data by Contractor for the purpose of providing required information to, and/or securing Government Approvals from, any Government Authority, Owner and Contractor shall cooperate to minimize the amount of such information furnished consistent with the interests of Owner and the requirements of the Government Authority involved.

(c) Contractor agrees that it shall not, during or after the term of this Agreement, disclose any Proprietary Data of Owner and its Affiliates, which is provided to Contractor during the performance of Work under this Agreement, including but not limited to, their costs, charges, rates, records, operating procedures, and methods of doing business, to any Person (other than Subcontractors as required for the performance of the Work), or to the general public for any reason or purpose whatsoever without the prior written consent of Owner, and that such Proprietary Data received by Contractor shall be used by it exclusively in connection with the performance of its responsibilities relating to the Work. However, nothing herein shall prevent Contractor from disclosing Proprietary Data of Owner or its Affiliates as required by Law or an order of a Government Authority; provided that Contractor shall, if Contractor has adequate advance notice, give Owner reasonable notice so as to allow Owner to seek a protective order or similar protection, and nothing herein shall prevent Contractor from disclosing to the appropriate Government Authority any noncompliance with or violation of laws, rules, regulations, or orders within the jurisdiction of such Government Authority. If, in the opinion of its legal counsel and in the absence of a protective order or waiver, Contractor is legally compelled to disclose Owner's Proprietary Data, Contractor will disclose only the minimum amount of such information or data as, in the opinion of its legal counsel, is legally required. In addition, Contractor shall have the right to receive and use Proprietary Data of Owner (but

excluding any financial information) for the purposes of performing or assisting in the performance of Startup, commissioning, licensing and Startup maintenance services for other AP1000 Nuclear Power Plant owners, and to disclose such Proprietary Data of Owner to such owners or Subcontractors for such purposes under provisions of confidentiality including an agreement substantially similar to Exhibit O-1, it being understood that in such instances, Owner does not warrant such data and Contractor shall indemnify Owner for any claims arising from the use of such data. Nothing herein grants the right to Contractor (or implies a license under any patent) to sell, license, lease or cause to have sold, licensed or leased, any Proprietary Data supplied by Owner under this Agreement.

(d) Title to Proprietary Data provided by Owner to Contractor and all copies made by or for Contractor in whole or in part from such Proprietary Data remains with Owner. Contractor shall include Owner's confidential or proprietary markings as provided by Owner on all copies thereof and excerpts made therefrom except with respect to excerpts made or used internally by Contractor for Facility Purposes; provided, however, that Contractor shall destroy any such excerpts which do not include Owner's confidential or proprietary markings when no longer needed for the purpose for which they were made.

19.2 Protection of Contractor's Proprietary Data.

(a) Any Proprietary Data of Contractor disclosed to Owner shall be marked "Proprietary" or the like on each page in which the respective party claims a proprietary or confidential interest therein (or for electronic data, on the opening screen of such data). If Owner receives information which it recognizes as being Proprietary Data, but which has not been marked as such, it shall promptly notify Contractor and mark the information as Proprietary Data.

(b) Owner's Use.

(i) Owner agrees not to use Proprietary Data provided by Contractor or copies thereof unless such use is solely for the purposes of the Facility (and associated simulator), in connection with design, construction and installation of the Facility, the simulator, and ancillary facilities, trouble-shooting, response to plant events, inspection, evaluation of system or component performance, scheduling, investigations, initial fuel loading, refueling, operation, maintenance, management, procurement, testing, training, repair, licensing, modification, decommissioning, ensuring the safety of the Facility, simulator and ancillary facilities and compliance with Laws or Government Authorities (collectively, the "Facility Purposes"). Nothing herein grants the right to Owner (or implies a license under any patent) to sell, license, lease, or cause to have sold any Proprietary Data supplied by Contractor under this Agreement.

(ii) Title to Proprietary Data provided by Contractor to Owner and all copies made by or for Owner in whole or in part from such Proprietary Data remains with Contractor. Owner shall include Contractor's confidential or proprietary markings as provided by Contractor on all copies thereof and excerpts made therefrom except with respect to excerpts made or used internally by Owner for Facility Purposes; provided, however, that Owner shall destroy any such excerpts which do not include Contractor's confidential or proprietary markings

when no longer needed for the purpose for which they were made. Except as otherwise provided under this Section 19.2 or Section 19.3, Owner agrees to keep such Proprietary Data confidential, to use such Proprietary Data only for the Facility Purposes and not to sell, transfer, sublicense, disclose or otherwise make available any of such Proprietary Data to others (other than Affiliates). However, nothing in this Article 19 shall prevent Owner from disclosing Proprietary Data of Contractor or its Affiliates as required by Law or an order of a Government Authority (including, without limitation, the COL); provided that Owner shall, if Owner has adequate advance notice, give Contractor reasonable notice so as to allow Contractor to seek a protective order or similar protection. If, in the opinion of Owner's legal counsel and in the absence of a protective order or waiver, Owner is legally compelled to disclose Proprietary Data, Owner will disclose only the minimum amount of such information or data as, in the opinion of Owner's legal counsel, is legally required. In any such event, Owner agrees to use good faith efforts to ensure that Proprietary Data that is so disclosed will be accorded confidential treatment.

(iii) Contractor hereby grants to Owner and its Affiliates, officers, directors, employees or attorneys who have a need for access to know such Proprietary Data reasonably related to the exercise of any rights of the Owner hereunder a transferable (but only as part of the sale or transfer of the Facility or the operating responsibilities related thereto), royalty-free, fully paid up, perpetual and irrevocable (unless terminated for the reasons set forth in Sections 22.3, 22.4, or 22.5), nonexclusive license to use and copy Contractor's Proprietary Data but only for the Facility Purposes (and for the associated simulator).

(iv) Owner may designate one or more entities as an Owner's Engineer. Contractor understands and recognizes that Owner intends to utilize a Third Party or parties as Owner's Engineer(s) for Facility Purposes in the day-to-day overall operations, maintenance and service of the Facility and each Unit. Upon such designation by Owner and written approval from Contractor, which shall not be unreasonably withheld, delayed or conditioned and, provided such grant is not explicitly prohibited in Contractor's existing Subcontracts, Contractor shall be deemed to have granted to the Owner's Engineer a fully paid-up, royalty-free, non-exclusive, nontransferable and nonassignable right and license to use the applicable deliverable portion of the AP1000 Facility Information (including the categories of information described on Table 2-1 of Exhibit A) and any released AP1000 Facility Information solely during the term that Owner's Engineer performs services for Owner in connection with the Facility and solely for the Facility Purposes. In the event a Contractor's Subcontractor does not permit Contractor to sublicense Subcontractor information for this purpose, Contractor agrees to employ commercially reasonable efforts to jointly negotiate with Owner and said Subcontractor to attempt to secure a license for Owner's Engineer. Notwithstanding the above, no written approval is required from Contractor in the event of a termination of the Agreement under Section 22.2(a).

(c) Owner's Disclosure to Third Party Recipients.

(i) Owner may disclose Contractor's Proprietary Data to third parties (hereinafter referred to as "Recipients" or "Recipient") in accordance with the procedures and subject to the limitations set forth in this Section 19.2 and Section 19.3, provided that such disclosure is exclusively for the Facility Purposes. . Notwithstanding the foregoing, disclosures

of Contractor's Proprietary Data (other than Contractor Non-Disclosable Information) may be made to Recipients for the purpose of evaluating the potential purchase of power from the Facility or in the exercise of the rights of such purchasers to review Owner's generation expansion plans and such disclosures shall be governed exclusively by the provisions of the existing Non-Disclosure Agreement among SCE&G, Santee Cooper and the Consortium Members dated September 11, 2007, as amended (the "Existing Confidentiality Agreement").

(ii) Owner shall enter into a proprietary data agreement with the Recipient substantially on the terms set forth in Exhibit O-1; provided, however, that the Owner may disclose such Proprietary Data without entering into such agreements to those persons to which access is required by any Government Authority or as necessary in order to comply with Law.

(iii) Should Owner discover a breach of the terms and conditions of a proprietary data agreement with a third party, Owner will promptly notify Contractor of such breach and provide to Contractor necessary information and support pertaining to any suit or proceeding contemplated or brought by Contractor against Recipient for such breach.

(iv) Contractor shall not be responsible to Owner for the consequence of the use or misuse of Contractor's Proprietary Data by third parties. Contractor makes no warranties, express or implied, to the extent of any such use or misuse of Contractor's Proprietary Data by third parties.

(v) Nothing herein shall prevent Owner from disclosing to the appropriate Government Authority any noncompliance or violation of Laws within the jurisdiction of such Government Authority.

(d) Owner's Export of Technical Information. Owner agrees to comply with relevant United States Government regulations concerning the export of technical information, with respect to Contractor's Proprietary Data provided to Owner by Contractor under this Agreement. This provision shall also apply to any technical information developed by Owner using Contractor's Proprietary Data. Irrespective of any other provisions in this Agreement, the obligations set forth in this Section 19.2(d) shall be binding so long as the relevant United States Government regulations remain in effect.

19.3 Special Procedures Pertaining to Contractor's Proprietary Data.

(a) Categories of Contractor Proprietary Data. The Parties acknowledge and agree that certain Proprietary Data of Contractor delivered to Owner under this Agreement in accordance with Table 2 of Exhibit A may be disclosed on a confidential basis without the prior consent of Contractor ("Contractor Disclosable Information", as described in Section 19.3(b)), and that certain other Proprietary Data of Contractor may not be disclosed by Owner to any third parties without the prior consent of Contractor ("Contractor Non-Disclosable Information", as described in Section 19.3(d)). Owner agrees to abide by the provisions of this Section 19.3 governing the disclosure of Contractor's Proprietary Data.

(b) Contractor Disclosable Information. Contractor Disclosable Information consists of the following Proprietary Data that has been developed by Contractor, to the extent such Proprietary Data does not include Contractor Non-Disclosable Information as described in Section 19.3(d) below:

(i) Descriptions of the plant, its components, or its systems (physical characteristics, general outline drawings, equipment lists, termination drawings, general arrangement drawings, electrical drawings, and basic schematic drawings);

(ii) Plant, component, or system data that can be measured by plant sensors;

(iii) Information that may be acquired by physical measurement, such as location, dimensions, weight and material properties;

(iv) Contractor operating and maintenance manuals, and QA documentation;

(v) Erection and commissioning documentation such as installation and layout drawings, and control room panel assembly and location drawings;

(vi) Information or calculations directly developed using publicly available methods or data;

(vii) Final results of calculated information or input assumptions to calculated information such that calculations could be recreated by a third party using the third party's own then-existing methods (excluding Contractor-developed test or experience-based data, methodologies, correlations and models, which Contractor will not release to Owner); and

(viii) Design specifications for non-safety related equipment and system specification documents ("SSDs") for non-safety related systems except the following: (A) all design specifications for non-safety Instrumentation & Control (I&C) systems, and (B) SSDs identified for the systems listed below:

- (1) Chemical and Volume Control System
- (2) Data Display and Processing System
- (3) Diverse Actuation System
- (4) Incore Instrumentation System
- (5) Operation and Control Centers
- (6) Plant Control System
- (7) Main Turbine Control and Diagnostics System

Execution Version

Confidential Trade Secret Information—Subject to Restricted Procedures

- (8) Main Generation System
- (9) Special Monitoring Systems

(c) Information. Contractor Disclosable Information may be disclosed by Owner to third parties without prior notice to Contractor, provided that such disclosure is exclusively for the Facility Purposes and provided that:

(i) Owner shall take reasonable steps to minimize the disclosure of Contractor's Proprietary Data to only that information necessary for a Recipient to perform its contracted functions;

(ii) Owner shall execute an agreement with the Recipient governing the disclosure of Contractor's Proprietary Data consistent with Section 19.2(c)(ii);

(iii) Contractor has the right to audit Owner's records and the contents of any agreements (subject to Owner's right to protect Proprietary Data of Owner and third parties) executed between Owner and a Recipient governing the disclosure of Contractor's Proprietary Data (Owner shall have the right to redact portions of such agreements not relevant to confidentiality); and

(iv) The provisions of Section 19.2(c)(iii), (iv) and (v) shall apply to such disclosure.

(d) Contractor Non-Disclosable Information. Contractor Non-Disclosable Information consists of the following information that has been developed by Contractor:

(i) Calculation for safety related equipment and systems, except those meeting the conditions set forth in Section 19.3(b)(vi) and (vii);

(ii) Plant Design Model;

(iii) I&C functional, system, software and interface requirements and functional logic diagrams;

(iv) Design specifications and qualification reports for safety related equipment;

(v) SSDs for safety related systems;

(vi) I&C architecture diagrams, I&C software verification and validation documentation, I&C testing procedures and test results;

(vii) Component data packages which include Manufacturing Deviation Notices, Certified Material Test Reports (CMTR) and Quality Releases (will typically be provided to the Owner in the final data package if the deviations exceed the official design/fabrication specifications); and

(viii) Information which contains confidential intellectual property of Contractor's Subcontractors or other Contractor utility customers which is licensed to Contractor and which Contractor has the right to sub-license to Owner, or confidential intellectual property of Contractor's Subcontractors licensed directly to Owner. Exhibit O-2 contains the list of such confidential intellectual property identified as of the Effective Date, and these items are subject to the separate contractual or license agreements and limitations on copying and use, and Owner agrees to and shall be bound by the terms of any such third-party contractual or license agreements provided or identified. The list in Exhibit O-2 will be updated by Contractor during the Work as such additional third party license agreements are identified and required as part of the Work and to update the list for any newer versions or replacements of the software or other confidential information, as applicable. Contractor shall not remove an item from Exhibit O-2 without Owner's mutual agreement. For license agreements with such third-parties necessary for maintenance or operation of the Facility for items such as those identified in Exhibit O-2 but not previously executed, Contractor agrees to make commercially reasonable efforts to negotiate terms consistent with the provision of this Article 19 permitting Contractor to sub-license to Owner confidential information received by Contractor from Contractor's Subcontractors or other contractor utility customers.

(e) Procedures Pertaining to Contractor Non-Disclosable Information. Upon written request by Owner, Contractor shall consider the release of Contractor Non-Disclosable Information. The request shall identify the information requested to be disclosed, the work that is to be performed and the name of the intended Recipient. The request shall be reviewed by Contractor for acceptability for disclosure based on the principle, agreed to by Owner and Contractor, that Contractor has the right to protect its proprietary information in which it has made a substantial investment and which required substantial innovation, balanced against whether such disclosure would jeopardize such proprietary rights of Contractor and the principle that Owner has the right to assure that services associated with maintenance and operation of the Facility are in all respects prudent, including cost, and thus may need to be performed by third party service providers. The determination of whether or not to disclose the information shall be made by Contractor in its discretion based on the above principles. Contractor shall make commercially reasonable efforts to respond within five (5) Business Days of receipt of a written request from Owner to release specific Contractor Non-Disclosable Information. If, at the end of fifteen (15) Business Days following such receipt by Contractor of a written request from Owner to release specific Contractor Non-Disclosable Information, Contractor has not rejected the request to release specific Contractor Non-Disclosable information, such request shall be deemed accepted by Contractor. If Contractor agrees to the disclosure of such information, the specific information to be provided to the Recipient (subject to Owner's right to protect Proprietary Data of Owner and Recipient) shall be subject to review and approval by Contractor and shall be governed by the terms of the confidentiality agreement with the Recipient substantially in the forms set forth in Exhibit O-1.

(f) Documents Containing Combined Information. Where a document marked "Proprietary" or the like contains Contractor Disclosable Information and Contractor Non-Disclosable Information, Owner shall not disclose any Contractor Non-Disclosable Information without Contractor's prior written consent. Owner shall have the right to:

(i) request Contractor to prepare and verify the accuracy of a version of such document containing only Contractor Disclosable Information;

(ii) request Contractor to prepare and verify the accuracy of a document which contains the specific information requested by the third party service provider; or

(iii) itself extract the Contractor Disclosable Information from such document and provide the Disclosable Information to the third party service provider in accordance with the procedures set forth in Section 19.3(c). Owner shall make commercially reasonable efforts to give notice to Contractor's currently-assigned designated contact of the proposed disclosure of any extract of Contractor Disclosable Information and, at least five (5) Business Days prior to such disclosure, shall provide such extract to Contractor for review. All right, title and interest in Contractor Disclosable Information contained in such document or material prepared by Owner remains with Contractor and, for the avoidance of doubt, is hereby assigned to Contractor.

(iv) Contractor shall be reimbursed on a Time and Materials Basis for the preparation and verification of documents for Owner under Section 19.3(f)(i) and (ii) above. Contractor shall assume no liability for, and will not warrant the accuracy or validity of, any version of a document containing Disclosable Information prepared by Owner pursuant to Section 19.3(f)(iii) above.

(g) Additional Procedures. Owner and Contractor shall each designate a contact person for the purposes of administering the disclosure of Contractor's Proprietary Data. Owner's designated contact shall be responsible for (i) ensuring that an agreement is executed with the Recipient governing the disclosure of Contractor's Proprietary Data consistent with Section 19.2(b)(ii) before the information is released, and (ii) making formal requests to Contractor for the release of information designated as Contractor Non-Disclosable Information. Contractor's designated contact shall be responsible for (i) handling and expediting responses to Owner's requests for release of information not specifically designated as disclosable and (ii) conducting periodic reviews of Owner's records listing the Recipients and purposes of disclosure of Contractor Proprietary Data.

19.4 Ownership of Rights in Documentation. The rights, title and interests in and to the copies of Documentation provided to Owner shall be owned by Owner, provided that all rights, title and interests in and to Contractor's or third party's Proprietary Data within the Documentation shall remain with Contractor or the applicable third party, subject to the provisions of this Article 19. The types of Documentation to be received by Owner are listed in Table 2 of Exhibit A.

19.5 Ownership of Invention Rights. Contractor shall retain the ownership rights in any and all discoveries and inventions (patentable or unpatentable) that Contractor or any of its Subcontractors makes, creates, develops, discovers or produces in connection with the design, manufacture, testing, analysis, maintenance or construction of the Facility or performance of the Work; provided, however, that Contractor hereby grants to Owner a transferable (but only as part of the sale or transfer of the Facility), royalty-free, fully paid up, irrevocable, nonexclusive

license to use such discoveries and inventions for the purposes of Facility (and associated simulator) maintenance, operation, training, repair, decommissioning and compliance with Laws.

19.6 Software. Software provided to Owner by Contractor shall be subject to the software license provisions set forth in Exhibit M-1.

19.7 Publicity. Each Party shall use commercially reasonable efforts to consult with the other Party before issuing any press releases or other public announcements involving any details of this Agreement other than that the Parties are or have had discussions with the other, except that the foregoing shall not be required if necessary to comply with Law or in the case of an emergency.

ARTICLE 20 – ENVIRONMENTAL; HAZARDOUS MATERIALS

20.1 Material Safety Data Sheets. To the extent required by applicable Law, Contractor shall provide to Owner Material Safety Data Sheets covering Hazardous Materials to be furnished, used, applied, or stored by Contractor, or any of its Subcontractors, at the Site in connection with the Work. Contractor shall coordinate with Owner's Project Director to provide a listing of such Hazardous Materials and their quantities at the Site for purposes of chemical inventory reporting pursuant to 40 C.F.R. Part 370 and similar state regulations.

20.2 Facility Use, Storage Removal. When the use or storage of explosives or other Hazardous Materials or equipment is necessary for the performance of the Work, Contractor shall exercise the utmost care and shall carry on its activities under the supervision of properly qualified personnel in accordance with applicable Laws. Before Unit Mechanical Completion of the Second Unit (or if there is no Second Unit, the First Unit), Contractor shall remove from the Site in accordance with applicable Laws any explosives and other Hazardous Materials that Contractor or its Subcontractors used, stored or located at the Site or any neighboring property, unless the same have been permanently incorporated into the Facility, provided that, if any such explosives and other Hazardous Materials are necessary for completion of the Work, Contractor shall be permitted to retain such explosives and other Hazardous Materials at the Site or any neighboring property but only if, and to the extent, in compliance with the COL and applicable Laws.

20.3 Handling, Collection, Removal Transportation and Disposal.

(a) Unless otherwise agreed by the Parties, Contractor shall be responsible for the proper handling, treatment, collection, containerizing and removal of Hazardous Materials brought onto the Site or created by Contractor or Subcontractors or spilled or introduced into or at the Site by Contractor or any Subcontractor, including any such Hazardous Materials furnished, used, applied or stored at the Site by Contractor or any Subcontractor, including used oils, greases, and solvents from flushing and cleaning processes performed under the Agreement. Prior to Unit Mechanical Completion of a Unit, Contractor shall be responsible for the proper handling, storage, transportation, and disposal of any Hazardous Materials brought onto the Site or created by Contractor or Subcontractors. Contractor shall be liable for any fines or penalties imposed for its or its Subcontractors' failure to comply with applicable Laws with respect to Hazardous Materials for which it is responsible pursuant to this Section 20.3(a).

(b) At all times during the performance of the Work, Owner shall be responsible for the prompt and proper handling, storage, transportation and disposal of Hazardous Materials existing at, on or under the Site that were not brought onto the Site or created by Contractor or Subcontractors. After Unit Mechanical Completion of a Unit, Owner shall be responsible for the prompt and proper handling, storage, transportation and disposal of Hazardous Materials used or generated with respect to such Unit or remaining at the Site (after proper handling, collection and containerizing by Contractor). As between the Parties, Owner shall be considered the generator for Hazardous Materials existing at, on or under the Site that were not brought onto the Site or created by Contractor or Subcontractors, and shall retain all responsibility and liability with respect to such Hazardous Materials. Subject to limitations on Santee Cooper's obligations as a matter of South Carolina law and subject to Contractor's obligations under Section 20.3(a), Owner shall indemnify Contractor against any penalties levied by any Government Authority for allowing any collected and containerized waste remaining in storage for more than the period allowed by applicable Laws without permit.

(c) Activities performed by each Party in connection with the handling, storage, collection, containerizing, transportation and disposal of Hazardous Materials shall be performed in accordance with the requirements of all Government Authorities and all applicable Laws.

20.4 Notice of Discovery. Contractor shall provide prompt written notice to Owner of any suspected Hazardous Materials that Contractor finds during performance of the Work not previously identified by Owner to Contractor. Owner shall be responsible for any further action required after the discovery. To the extent any such action causes an increase in Contractor's costs or a delay in the performance of the Work, Contractor shall be entitled to a Change Order pursuant to Article 9.

ARTICLE 21 – TITLE; RISK OF LOSS

21.1 Transfer of Title. Except as otherwise expressly provided in this Agreement, title to an item of Equipment shall pass to Owner upon payment in full by Owner to Contractor for such item of Equipment. The passage of title to Owner shall not be deemed an acceptance or approval of such Equipment (or any Work), affect the allocation of risk of loss, or otherwise relieve Contractor or Owner of any obligation under this Agreement to provide and pay for transportation and storage in connection with the Equipment.

21.2 Risk of Loss.

(a) Whether or not title has passed to Owner, the risk of loss for each system or structure of a Unit shall remain with Contractor until, and shall pass to Owner upon Turnover of such system or structure. Contractor shall be obligated to replace, repair or reconstruct the Equipment that is lost, damaged, or destroyed before the risk of loss of the Equipment is transferred to Owner, provided that Contractor is reimbursed for performing such replacement, repair, or reconstructions, as applicable, from the Builder's Risk insurance described in Sections 16.1(b) and 16.2(a)(ii) or as otherwise provided herein. Notwithstanding the foregoing, and notwithstanding any provision of this Agreement that requires a Party to bear the risk of loss to its own property, during the Turnover process, and until Unit Mechanical Completion and

thereafter, (i) if Owner or any of its Personnel or Invitees damages any part of a system or structure of a Unit that has not yet achieved Turnover, Owner shall reimburse Contractor on a Time and Materials Basis to the extent of the negligence of Owner, its Personnel or Invitees, for any amounts not reimbursed by the applicable insurance policy, including the insurance deductibles related to such loss and (ii) if Contractor or any of its Personnel or Invitees damages any part of a system or structure of a Unit that has achieved Turnover, Contractor shall be liable for the insurance deductibles related to such loss subject to and limited by Section 16.2(a)(ii).

(b) Risk of loss to Equipment that Contractor removes from the Facility or from the Site for repair, replacement or refurbishment under the Warranty shall transfer to Contractor at the time of its loading on the carrier at the Facility. Owner shall reassume the risk of loss upon completion of the unloading of the Equipment from the carrier at the Facility upon completion of such replacement, refurbishment or repair services.

21.3 Risk to a Party's Property. Each Party is responsible for insuring its own property (including the Facility and surrounding property) during the Work and thereafter, and each Party shall extend the benefit of such property insurance to the other. Each Party on behalf of itself and its insurers hereby waives all rights of recovery (including subrogation rights) against the other Party (including Contractor Interests) for any loss or damage to its property during the Work and thereafter, including the deductibles under any insurance policy. Notwithstanding the foregoing, however, should a Party cause damage to the other Party's property (including the Facility and surrounding property), such Party shall be responsible for the other Party's deductible under its insurance policy, up to (and limited to) one hundred thousand dollars (\$100,000). For the avoidance of doubt, Contractor's liability for the payment of such amount shall not be reimbursable hereunder. Owner shall reimburse Contractor on a Time and Materials Basis for its work to remedy such loss or damage that exceeds such amount, whether based on contract, tort (including fault, negligence and strict liability) or otherwise. The foregoing shall apply notwithstanding any other provision to the contrary.

ARTICLE 22 – SUSPENSION AND TERMINATION

22.1 Suspension by the Owner for Convenience.

(a) Owner may, without cause, order Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as Owner may determine. Any such suspension of the Work shall entitle Contractor to a Change Order pursuant to Article 9.

(b) Owner shall continue to meet the payment obligations to Contractor during any suspension, delay or interruption for Work actually performed.

(c) During any suspension, Contractor shall take reasonable precautions to protect, store and secure the Equipment against deterioration, loss or damage and to minimize the charges for the suspension.

(d) Contractor shall resume any suspended Work promptly following receipt of notice from Owner to do so.

22.2 Termination by Owner for Cause.

(a) Without limiting any other rights that it may have hereunder, Owner may terminate the Agreement upon notice to Contractor if:

(i) Contractor is in breach of a material provision of this Agreement and fails to cure the breach within ninety (90) Days following written notice of such breach or, if such breach is not capable of being cured within such ninety (90) Day period, such longer period as is reasonably necessary so long as Contractor has commenced the cure within such ninety (90) Day period and thereafter diligently pursues the cure;

(ii) Contractor has failed within sixty (60) Days after receiving written notice of a Lien to (x) remove, (y) bond over or (z) provide a written indemnity for any Liens filed against the Facility, the Site or any other property of Owner by any of its Subcontractors (provided that all of Contractor's invoices have been paid in accordance with the Agreement) and has continued to fail to take any of such action within five (5) Business Days following Owner's notice of its intent to terminate for such failure;

(iii) unless due to an Uncontrollable Circumstance, Substantial Completion of a Unit is delayed by more than one hundred eighty (180) Days past the Guaranteed Substantial Completion Date for such Unit and Contractor is not, in the reasonable opinion of Owner, exercising due diligence to correct same; or

(iv) a Consortium Member is Insolvent.

(b) When Owner terminates the Agreement for one of the reasons stated in Section 22.2(a), Contractor shall not be entitled to receive further payment until the Work is finished subject to the provisions set forth in Section 22.2(c)(iii).

(c) Upon any termination pursuant to this Section 22.2, Owner may at its option elect to: (i) assume responsibility for and take title to and possession of the Facility and Work and Equipment remaining at the Site and Equipment located outside the Site for which payment in full or in part has been made by Owner; (ii) succeed automatically, without the necessity of any further action by Contractor, to the interests of Contractor in any or all Subcontracts entered into by Contractor with respect to the Work (if such Subcontracts permit), and shall be required to compensate such Subcontractors if acceptable to such Subcontractors only for compensation becoming due and payable to such parties for goods and services provided under the terms of their Subcontracts with Contractor from and after the date Owner elects to succeed to the interests of Contractor in such Subcontracts and (iii) request that Contractor continue to perform the Work or any portion thereof pursuant to a separate agreement. In the event of any termination pursuant to this Section 22.2, Owner may, at its option, finish the Work and other work by whatever method Owner may deem expedient.

(d) If the unpaid balance of the Firm Price and Fixed Price exceeds the costs of finishing the Firm Price and Fixed Price portion of the Work (including all reasonable administrative and other direct costs incurred as a result of such termination), such excess shall be paid to Contractor. If the cost of finishing the Firm Price and Fixed Price portion of the Work

(including all reasonable direct costs for Owner to administer the completion of the Work and other direct costs incurred by Owner as a result of such termination) exceeds the unpaid balance of the Firm Price and Fixed Price, Contractor shall pay the difference to Owner.

(e) To enable Owner to exercise its rights upon termination, each of Westinghouse and Stone & Webster has granted Owner an intellectual property license on the date hereof, as set forth in Exhibit M-2 and Exhibit M-3, respectively.

22.3 Termination by Owner for Convenience.

(a) Owner may, at any time, terminate the Agreement for Owner's convenience and without cause.

(b) In the event of termination for Owner's convenience prior to the issuance of the Full Notice to Proceed, Contractor shall be entitled to receive payment for its Termination Costs.

(c) If Owner terminates for its convenience after the issuance of the Full Notice to Proceed, Contractor shall be entitled to receive payment for its Termination Costs and Owner shall pay to Contractor a termination fee of (i) in the first year after issuance of the Full Notice to Proceed, fourteen percent (14%) of Contractor's Profit; (ii) in the second year after issuance of the Full Notice to Proceed, ten percent (10%) of Contractor's Profit; (iii) in the third year after issuance of the Full Notice to Proceed, six percent (6%) of Contractor's Profit; (iv) in the fourth year after issuance of the Full Notice to Proceed, four percent (4%) of Contractor's Profit; and (v) in the fifth year after issuance of the Full Notice to Proceed, two percent (2%) of Contractor's Profit. Thereafter, no termination fee shall be required. In each instance, "Contractor's Profit" refers to Profit to the extent not already received in the payments made of the Contract Price prior to the date of such termination. In the event that Owner has exercised its right under Section 3.3(b) to cancel the Second Unit prior to issuance of the Full Notice to Proceed and, subsequent to issuance of the Full Notice to Proceed but within one (1) year following the cancellation of the Second Unit, terminates this Agreement for its convenience, the Profit shall be determined as if both Units were cancelled after issuance of the Full Notice to Proceed. The one (1) year period described in the preceding sentence shall be extended by the duration of any period of suspension of the Work pursuant to Section 22.1 that is initiated during such one (1) year period.

(d) Upon such termination and payment, the Parties shall have no further liability to one another other than any liability that arose prior to the termination of this Agreement pursuant to this Section 22.3 and the Parties' obligations under Section 22.6.

22.4 Suspension and Termination Due to Other Circumstances.

(a) In the event that Owner does not issue the Full Notice to Proceed as established in Section 3.3(b), Contractor shall have the right to suspend its Work, demobilize its forces and take such other actions as are reasonably needed to address the consequences of a delay in the Work, including the suspension or cancellation, as applicable of the Work being performed under Subcontracts. Prior to initiating such suspension, Contractor shall issue a notice

to Owner stating the basis for such suspension. Once the event that allowed Contractor to suspend Work under this Section 22.4(a) has occurred, Owner and Contractor shall negotiate a Change in the Contract Price, Project Schedule (including the Guaranteed Substantial Completion Date(s)), and such other applicable terms and conditions of this Agreement to reflect the effect of such event, including, without limitation, the suspension of the Work, and the demobilization and remobilization of Contractor's and the Subcontractors' forces, as applicable. Contractor shall incorporate agreed upon changes in a Change Order, or, in the absence of agreement, shall prepare a proposed Change Order reflecting the changes it deems necessary to reflect the effect of such event. Within sixty (60) Days following receipt of the requested Change Order from Contractor, Owner shall notify Contractor whether it (i) accepts the Change Order as proposed by Contractor, (ii) desires to have disputed issues in the Change Order resolved under the terms of Article 27; provided, however, that Owner shall not have the right to refer a proposed Change in the Project Schedule to dispute resolution; or (iii) desires to terminate this Agreement. If Owner does not (x) accept the Change Order as proposed by Contractor, (y) notify Contractor of its desire to have disputed issues (which, as stated above, may not include a dispute over the Project Schedule) resolved under Article 27 or (z) issue notice of termination within such sixty (60) Day period, Contractor shall have the right to terminate this Agreement upon thirty (30) Days notice to Owner.

(b) Either Party may terminate this Agreement in the event that DOE fails to fund all NuStart AP1000 Nuclear Power Plant COL activities and AP1000 Nuclear Power Plant design finalization substantially on the schedule set forth in Exhibit E, and within six (6) months following such failure, the Parties have not agreed, pursuant to good faith negotiations, on an alternative funding method satisfactory to the Parties;

(c) In the event that through no act or fault of Contractor or a Subcontractor, one or more suspensions, delays or interruptions of the Work by Owner or due to an Uncontrollable Circumstance constitute in the aggregate more than seven hundred thirty (730) Days or more than one hundred eighty (180) Days out of any three hundred sixty-five (365) Day period, or (unless due to a breach by Contractor of its obligations under this Agreement or a failure by Contractor to comply with applicable Law) an order of a Government Authority having jurisdiction over the Facility which requires the Work to be permanently stopped (or stopped for greater than one year), Contractor shall have the right to notify Owner that it intends to terminate the Agreement. If Owner does not agree to such termination within thirty (30) Days following Contractor's notice, Owner and Contractor shall negotiate a Change in accordance with Article 9 to reflect the effect of suspension, delay or interruption of the Work. Contractor shall incorporate agreed upon changes in a Change Order or, in the absence of agreement, shall prepare a proposed Change Order reflecting the changes it deems necessary to reflect the effect of the suspension, delay or interruption. Within thirty (30) Days following receipt of the requested Change Order from Contractor, Owner shall notify Contractor whether it (i) accepts the Change Order as proposed by Contractor, (ii) desires to have disputed issues in the Change Order resolved under the terms of Article 27 or (iii) desires to terminate this Agreement. If Owner does not (x) accept the Change Order as proposed by Contractor, (y) notify Contractor of its desire to have disputed issues resolved under Article 27 or (z) issue notice of termination within such thirty (30) Day period, Contractor shall have the right to terminate this Agreement upon thirty (30) Days notice to Owner.

(d) In the event that the Agreement is terminated within ten (10) months immediately following the Effective Date, Contractor shall pay to Owner, within thirty (30) days following the date of termination, an amount equal to the Long Lead Material Payment. Moreover, if during the ten (10) month period immediately following the Effective Date, Owner terminates the Agreement solely due to the failure of the South Carolina Public Service Commission to approve SCE&G's Base Load Review Filing, Contractor shall pay to Owner an amount (in addition to the Long Lead Material Payment) (the "Additional Amount") equal to (i) the aggregate payments made by Owner for the Equipment identified with the Long Lead Material Payment as of the date of termination minus (ii) the Long Lead Material Payment. Payments of the Additional Amount will be made in three equal installments at intervals of twelve (12) months, twenty-four (24) months and thirty-six (36) months following the date of termination. In such circumstances, and notwithstanding the last paragraph of Section 22.6, Contractor shall retain ownership of the rights in the Equipment upon any such termination.

(e) In the event of termination pursuant to this Section 22.4, Contractor shall be entitled to receive payment for its Termination Costs; however, if the events in 22.4(a) or (b) occur as a result of Contractor's breach of its obligations under this Agreement, the Termination Costs shall be determined without overhead or profit for Contractor (whether such overhead or profit are incorporated into the rates charged by Contractor or are separately stated).

22.5 Termination by Contractor.

(a) Contractor may terminate this Agreement for any of the following reasons:

(i) Owner fails to make payment to Contractor in accordance with the Agreement for a period exceeding forty-five (45) Days after an undisputed invoice has become due, or Owner fails to make payment to Contractor of disputed amounts in accordance with the provisions of Section 8.4(b)(i) for a period exceeding forty-five (45) Days following the date provided for in Section 8.4(b)(i), provided, in either case, that Contractor has provided the notices of overdue payment as required under Section 8.4(c);

(ii) Owner is in breach of a material provision of this Agreement and fails to cure the breach within ninety (90) Days following written notice of such breach or, if such breach is not capable of being cured within such ninety (90) Day period, such longer period as is reasonably necessary so long as Owner has commenced the cure within such ninety (90) Day period and thereafter diligently pursues the cure; or

(iii) Either SCE&G or Santee Cooper is Insolvent unless the other of SCE&G or Santee Cooper has provided security for payments that would be due from such Insolvent Person in accordance with Section 8.6 and no other changes to this Agreement have resulted from proceedings involving the Person that is Insolvent.

(b) Upon termination of this Agreement pursuant to this Section 22.5, Contractor shall be entitled to receive payment from Owner as if it were a termination for Owner's convenience under Section 22.3.

22.6 Actions Required of Contractor upon Termination. Upon receipt of a notice of termination from Owner or the issuance of a notice of termination by Contractor, Contractor shall:

(a) in an orderly manner and consistent with safety considerations, cease operations as directed by Owner in the notice;

(b) take actions necessary, or that Owner may direct, for the protection and preservation of the Work (wherever located); and

(c) except for Work directed to be performed prior to the effective date of termination stated in the notice, enter into no further contracts and purchase orders.

Upon receipt of a notice of termination for convenience from Owner, a notice of termination for cause from Owner pursuant to Section 22.2, or a notice of termination from Owner or Contractor, as applicable, pursuant to Section 22.4, Contractor shall use commercially reasonable efforts for a commercially reasonable time to sell to a third party the Equipment for which Owner has made Milestone Payments or to cancel such Equipment orders. Contractor shall consult with Owner with respect to such sale or cancellation to determine which is the preferred course of action. If Contractor sells the Equipment to a third party, then the net sales price for the Equipment paid to Contractor shall be remitted to Owner when received by Contractor. If Contractor determines that it is able to use the Equipment for another customer, the price to be charged to the other customer for such Equipment shall be refunded to Owner as such payments are received from the other customer. If Equipment for which Owner has made Milestone Payments cannot be sold, cancelled or designated for another customer, then, at Owner's request, Contractor shall assign to Owner, and Owner shall assume, all rights and obligations under such Subcontract. Owner shall pay Contractor for such activities on Owner's behalf as follows: (i) for Westinghouse, its Recoverable Costs plus SGA and Pro Rata Profit on such costs and (ii) for Stone & Webster, its costs and expenses on a Time and Materials Basis. In each instance under this Article 22 in which Termination Costs are due from Owner, such Termination Costs shall be determined following the performance of the undertakings of Contractor pursuant to this paragraph (other than the obligation to refund to Owner amounts received from a third party or another customer as provided above).

ARTICLE 23 – SAFETY; INCIDENT REPORTING

23.1 Environmental, Health and Safety Programs. Contractor shall be responsible for initiating, maintaining and supervising the safety precautions and programs in connection with its performance of its Work under the Agreement, including necessary precautions and programs for the Site and any areas adjacent to the Site under its supervision and/or control. Contractor shall comply with applicable workplace safety Laws governing the Work and/or Site.

23.2 Designated Contractor Safety Representative. Contractor shall designate a responsible, qualified person in Contractor's organization at the Site whose duty shall be the prevention of incidents and injuries and addressing unsafe and undesirable conditions and behavior for each of the following three (3) areas: environmental matters (U.S. Environmental Protection Agency and any applicable state agency), health matters (industrial hygiene and

employee health hazard prevention/mitigation) and safety matters, as each area relates to construction activities generally and the Work specifically. One individual may be designated for more than one of these three areas if the individual is qualified in the relevant areas.

23.3 OSHA and Other Laws. Contractor shall provide notices and comply with applicable workplace safety Laws, including the Occupational Safety and Health Act ("OSHA") and provisions of the Americans with Disabilities Act relevant to workplace safety. Contractor shall maintain the logs required under OSHA.

(a) Contractor represents that it is familiar with the Site, the Work to be performed, the Equipment to be provided, the hazards of the Work, and, if applicable, the Material Safety Data Sheets for, and the hazards of, the Hazardous Materials that Contractor is expected to provide. Contractor represents that it is familiar with the labeling system used in the workplace.

(b) Contractor acknowledges that OSHA and regulatory standards or state plan equivalent (collectively, the "OSHA Standards") require that its employees be trained in various subjects, such as, but not limited to, the hazards of, and standards applicable to, the Work (29 C.F.R. § 1926.21(b)(2)) (applicable to construction work), lockout/tagout (29 C.F.R. § 1910.147), confined space entry (29 C.F.R. §§ 1926.21(b)(6) or 1910.146), and asbestos (29 C.F.R. §§ 1910.1001 or 1926.1101). Prior to performing Work on the Site, Contractor's employees and their supervisors shall, as required, have been trained in accordance with all applicable OSHA Standards relating to the duties they perform or supervise, and they shall have been trained to recognize and avoid any hazards related to the Work, and to perform the Work safely and without danger to any employee or to any property.

(c) Contractor represents that its employees are or shall be equipped with the personal protective equipment required by applicable OSHA Standards in 29 C.F.R. Parts 1926 and 1910, and with the personal protective equipment required to protect its employees against other serious health or safety hazards. Contractor agrees that it shall discipline its employees who violate any OSHA Standards or applicable Laws in accordance with its own policies and procedures.

(d) Contractor shall comply with all OSHA Standards applicable to the Work, including those requiring pre-employment testing of employees, such as, but not limited to, pulmonary testing, blood testing, urine testing, hearing testing, respirator fit testing, drug screening, and/or applicable medical surveillance testing.

(e) Contractor shall comply with its safety programs and/or any Site specific safety plans which Owner has reviewed and accepted.

(f) Within a reasonable time following a specific request by Owner, and to the extent permitted by applicable Law, Contractor shall provide to Owner copies of training materials for its employees concerning a particular safety and health standard and/or particular substantive or technical training requirement of the job.

23.4 Worksite Safety.

(a) Contractor shall take reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury or loss to Persons and property resulting from the Work, including:

(i) Contractor or Subcontractor employees and other Persons performing the Work and any Persons who may be affected by the performance of the Work;

(ii) the Equipment to be incorporated into the Facility, whether in storage on or off the Site or under the care, custody or control of Contractor or Subcontractors; and

(iii) other property at or adjacent to the Site, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities.

(iv) Contractor shall erect, maintain or undertake, as required by existing conditions and the performance of the Agreement, reasonable safeguards for the safety and protection of Persons and property, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying Owner and users of adjacent sites and utilities. Those precautions may include providing security guards.

(v) Contractor agrees to provide to Owner the name, title, and phone number of its emergency contact person prior to the commencement of the Work.

23.5 Dangerous Materials. When the use or storage of explosives or other dangerous materials or equipment or unusual methods are necessary for the Work, Contractor shall exercise utmost care and carry on its activities only under the supervision of properly qualified personnel. Contractor shall notify Owner's Project Director prior to bringing any explosives onto the Site.

23.6 Cooperation in Governmental Investigations and Inspections. Contractor and its Subcontractors shall provide reasonable assistance to Owner in responding to requests and inspections by any Government Authority for information in connection with the Work involving Contractor or its Subcontractors. Contractor shall provide the NRC the facilities, furnishings, conveniences and access set forth in 10 C.F.R. § 50.70 and shall take good faith efforts to keep confidential the presence of any representative of the NRC at the Site as provided in 10 C.F.R. § 50.70(b)(4).

23.7 Audit. To the extent permitted by applicable Law, and in response to specific and identifiable concerns, Contractor shall permit Owner to review and copy Contractor's documents related to those specific and identifiable safety and health concerns at the Site.

ARTICLE 24 – QUALIFICATIONS AND PROTECTION OF ASSIGNED PERSONNEL

24.1 Screening Measures. A fitness for duty and security screening program ("Screening Measures") shall be established for all Contractor and Subcontractor employees for the Work. This program shall comply with the regulations set forth in the Laws governing new nuclear build construction. This program shall contain:

- Prohibition of the use, transportation, sale, or possession of illegal drugs
- Prohibition of the use or possession of alcohol beverages on the Site
- Requirement that employees be fit for duty at all times while on the Site
- Requirement that employees submit to drug and alcohol testing during preaccess screening, for-cause testing, and post event testing, as necessary
- Requirement that all employees must immediately report known, suspected, or potential violations of this policy to supervisory personnel or management
- Requirement that a subset of workers who perform important safety functions be subject to random testing
- Protection of information and records to assure confidentiality
- Requirement that employees consent to a search or inspection of the individual's property while on the Site.

In addition to pre-access screening for drugs and alcohol an identity check and screening for criminal history shall be performed. A law enforcement criminal records check on all potential employees that shall include:

- Verification of identity
- A criminal history check of the individual shall be performed
- Prior to a final adverse determination, the applicant shall be informed of the basis for potential denial of access to the Site to assure the accuracy of the basis for such denial.

During preaccess screening a probationary period of not to exceed thirty (30) Days shall be granted to allow for the testing and prescreening to be performed while the employee is put to work.

24.2 Contractor's Personnel. Contractor shall comply with applicable labor and immigration Laws that may impact Contractor's Work under this Agreement, including the Immigration Reform and Control Act of 1986 and Form I-9 requirements. Contractor shall perform the required employment eligibility and verification checks and maintain the required employment records. Contractor acknowledges and agrees that it is responsible for conducting

adequate screening of its employees and agents prior to starting the Work. By providing an employee or Subcontractor under this Agreement, Contractor warrants and represents that the Screening Measures with respect to such employee or Subcontractor have been completed and that such Screening Measures did not reveal any information that could adversely affect such employee's or Subcontractor's suitability for employment or engagement by Contractor or competence or ability to perform duties under this Agreement. If in doubt whether a suitability, competence or ability concern exists, Contractor shall discuss with Owner the relevant facts and Owner shall determine, in its sole discretion, whether such Person should be allowed to perform the Work. Owner, in its sole discretion, shall have the option of barring from the Site any person whom Owner determines does not meet the qualification requirements set forth above. In all circumstances, Contractor shall ensure that the substance and manner of any and all Screening Measures performed by Contractor pursuant to this Section conform fully to applicable Law. Contractor shall submit to Owner for approval a set of work rules that applies to all Contractor and Subcontractor employees. This set of work rules shall establish Contractor's and Subcontractor's disciplinary action policy and hiring and termination policy. This policy shall detail the actions to be taken by Contractor and Subcontractors for acts of misconduct, negligence and incompetence of their employees. The disciplinary action program shall be progressive up to termination and the barring of employee from future employment.

24.3 Training of Employees. Contractor represents that all Contractor and Subcontractor personnel shall as required be trained regarding environmental, OSHA and NRC requirements and any other matters required by applicable Laws and relevant to the Work.

24.4 NRC Whistleblower Provision. Contractor and its Major Subcontractors shall comply with the requirements of Section 211, "Employee Protection," of the Energy Reorganization Act of 1974, 42 U.S.C. § 5851, as amended; 10 C.F.R. § 50.7, "Protection of Employees Who Provide Information" and 29 C.F.R. § 24 (collectively, the "Whistleblower Provisions"). Contractor shall implement a program and develop procedures to advise all of Contractor's and the Major Subcontractors' personnel that they are entitled and encouraged to raise safety concerns to Contractor's management, to Owner, and to the NRC, without fear of discharge or other discrimination.

24.5 Respirator Protection. For any Work at the Site that shall expose any of Contractor's or any Subcontractor's employees or representatives to sources of radiation or require them to wear respiratory protection, Contractor shall require each of these employees or other representatives, prior to entering any radiation area or wearing respiratory protection, to undergo a physical examination to determine if occupational radiation exposure or the wearing of respiratory protection should be avoided because of any medical condition or other circumstance, and in addition, to undergo such physical examination as may be required by applicable Law or by any Government Authority having jurisdiction. Contractor shall keep a record of the physical examination available for inspection by Owner. Owner shall assist Contractor in defining the applicable requirements, if requested.

ARTICLE 25 – RECORDS AND AUDIT

25.1 Technical Documentation. Except to the extent applicable Laws require a longer retention, Contractor shall maintain and shall cause its Major Subcontractors to maintain all

technical documentation relative to the Equipment for a period of three (3) years after Final Completion.

25.2 Accounting Records. Except to the extent applicable Laws require a longer retention, Contractor shall maintain and shall cause its Subcontractors to maintain complete accounting records relating to the Work performed or provided under this Agreement on a Time and Materials Basis or the Target Price, or other reimbursable basis in accordance with generally accepted accounting principles in the United States, as set forth in pronouncements of the Financial Accounting Standards Board (and its predecessors) and the American Institute of Certified Public Accountants, for a period of three (3) years after Final Completion of a Unit, except that records relating to Sales Taxes for such items must be retained for seven (7) years as specified in Section 25.5.

25.3 Maintenance of Records Generally. Notwithstanding anything in Section 25.1 or 25.2 to the contrary, Contractor shall ensure that its maintenance of records complies with the applicable provisions of 10 C.F.R. § 50.71.

25.4 Right to Audit. If Owner requests verification of Recoverable Costs claimed by Contractor for reimbursement or for any Work performed or provided on a Time and Materials Basis or the Target Price, Owner or its authorized representative shall be permitted to examine and audit Contractor's records and books, and Subcontractors' where permitted by contract, related to those costs. The right to initiate any audit shall expire, with respect to any such cost, three (3) years after the cost was incurred. Such audit shall provide Owner with a reasonable opportunity to verify that all costs and charges have been properly invoiced in accordance with the terms of this Agreement. Owner shall not be entitled to any information that would enable Owner to determine the make-up of any agreed upon lump sum, or any fixed or established amounts, rates or multipliers, including the Firm Price or the Fixed Price, unless access to this information is needed to support a request made by Owner or Contractor for a change in indices in accordance with Article 7. If any audit by the auditor reveals charges to or paid by Owner as charges or fees which are incorrectly charged, then Owner shall be entitled upon demand for a refund from Contractor of such amounts, together with interest at the Prime Rate plus one percent (1%) per annum, measured from the date of the incorrect invoice until the date the refund is paid. Likewise, if any audit or if any examination by any state or local taxing agency reveals additional Sales Tax to be imposed upon Contractor for under collection of tax from Owner on a taxable sale, then Contractor shall be entitled, upon demand, to a payment from Owner of all such amounts, together with any interest and penalties imposed by any state or local taxing agency. Notwithstanding anything in this Section 25.4 to the contrary, Owner shall not be restricted from any audit rights, including any right to conduct audits directly without any intermediary, which it is required to have in order to comply with applicable Laws, including the regulations of the NRC.

25.5 Sales Tax Records. Contractor shall provide or provide access to the information, documents, receipts, invoices, and data to Owner on a monthly basis, or as Owner may from time to time reasonably request and as may be specifically required by the South Carolina state tax regulations for non-tax exempt items, and otherwise fully cooperate with Owner in connection with the reporting of (a) any Sales Taxes payable with respect to the Work and (b) any

assessment, refund claim or proceeding relating to Taxes payable with respect to the Work. This may include a monthly assessment visit from the South Carolina state tax department to review this information. Contractor shall require its Major Subcontractors to provide to Contractor all information and data Contractor may reasonably request for purposes of complying with this Article and otherwise fully cooperate with Owner. Contractor shall retain, and shall require Major Subcontractors to retain, copies of such documentation and all documentation relating to purchases relating to the Work or the payment of Sales Taxes, if any, for a period of not less than seven (7) years. Contractor shall ensure that its contracts with all Major Subcontractors effectuate the provision of this Section 25.5. Contractor's obligations under this Section shall survive the termination, cancellation or expiration of this Agreement for any reason and shall last so long as is necessary to resolve any and all matters regarding Taxes attributable to the Work. This information is intended solely for the use of tax compliance.

ARTICLE 26 – TAXES

26.1 Employment Taxes. Contractor shall be responsible for payroll or employment compensation taxes, Social Security taxes, or for labor-related withholding taxes for Contractor and its Subcontractors or any of their employees ("Employment Taxes").

26.2 Sales and Use Taxes on Contractor Tools. Contractor shall pay the taxes on Contractor's purchases of goods, tools, equipment, supplies and other consumables which are not permanently incorporated into the Facility and which remain the property of Contractor. Contractor shall also pay the taxes attributable to Contractor's Construction Equipment, temporary buildings and other property used by Contractor in its performance of this Agreement. Allowance for such taxes is included in the Firm Price and Fixed Price, and Contractor shall pay those taxes when assessed, without claim against Owner for reimbursement for Work under the Firm Price and Fixed Price, but shall be reimbursed for such charges for Work under the Target Price and for Work performed on a Time and Materials Basis. Contractor shall impose a similar obligation on all Subcontractors and shall ensure that no Subcontractor providing Firm Price or Fixed Price Work shall have any claim against Owner for reimbursement of those taxes.

26.3 Sales and Use Tax on Equipment. Notwithstanding the above, the Firm Price, Fixed Price and Target Price does not include monies for the payment of any sales and use taxes on Equipment incorporated into the Facility. Contractor shall consult with Owner on Equipment purchases and work with Owner to obtain the most favorable sales and use tax benefits for Owner.

26.4 State Property Taxes. Contractor and Owner agree that Owner shall be responsible for the filing requirements and payment obligations for all state and local taxes on the Site and the Equipment incorporated (and to be incorporated) into the Facility, provided that Contractor shall be responsible for the filing of property tax returns and the payment of state and local property taxes on Construction Equipment, tools and material which are not incorporated into the Facility and which are owned, used or leased by Contractor to perform the Work.

26.5 Tax Indemnification.

(a) Except in cases where the imposition of any Tax is the result of the negligence or willful or wanton misconduct by Contractor, Owner shall defend, reimburse, indemnify and hold Contractor harmless for the costs and expenses (including any resulting Taxes, interests and penalties) incurred by Contractor as a result of (i) Owner's formal protest to any Government Authority of any Employment Taxes or Sales Taxes paid or assessed or any property taxes paid or assessed by Government Authorities on the Site or the Equipment, or any other similar Tax, whether local, state or federal, including any litigation expenses in the event Owner decides to protest any such Taxes or (ii) an audit or other investigation by any Government Authority, including the defense and any resulting Tax liability in connection therewith. Owner shall not be responsible for any costs incurred by Contractor necessary to substantiate or verify information for any Tax audit conducted by any Government Authority in the normal course of business.

(b) Except in cases where the imposition of any Tax is the result of the negligence or willful or wanton misconduct by Owner, Contractor shall defend, reimburse, indemnify and hold Owner harmless for the costs and expenses (including any resulting Taxes) incurred by Owner as a result of (i) Contractor's formal protest to any Government Authority of any Employment Taxes, or any Sales Tax or any property tax paid or assessed by any Government Authority on Contractor's Construction Equipment, tools and materials that are not incorporated into the Facility, or any other similar Tax, whether local, state or federal, including any litigation expenses in the event Contractor decides to protest any such Taxes or (ii) an audit or other investigation by any Government Authority, including the defense and any resulting Tax liability in connection therewith. Contractor shall not be responsible for any costs incurred by Owner necessary to substantiate or verify information for any Tax audit or investigation conducted by any Government Authority in the normal course of business.

26.6 Pollution Control Equipment Information. Contractor shall supply Owner with all reasonable information requested by Owner for qualifying air, water or noise pollution control and other equipment for exemption from sales and use taxes, property taxes and any other tax credits, refunds or exemptions available to Owner. Owner shall supply Contractor with all reasonable information and cost analyses requested by Contractor for qualifying air, water or noise pollution control equipment for exemption from sales and use taxes, property taxes and any other credits, refunds or exemptions available to Contractor.

26.7 Non-resident Contractor. Contractor shall comply with Section 12-8-550 of the Code of Laws of South Carolina (1976), as amended, which requires any nonresident contractor providing labor in the State of South Carolina to register with the South Carolina Department of Revenue or Secretary of State to avoid the withholding of two percent (2%) of each payment made to the nonresident contractor.

ARTICLE 27 – DISPUTE RESOLUTION

27.1 Claims. A "Claim" is any claim, dispute or other controversy arising out of or relating to this Agreement, including Change Disputes. Claims must be initiated by written notice. The responsibility to substantiate Claims shall rest with the Party making the Claim. The

other Party shall provide reasonable cooperation in making available non privileged information in its possession or control that is relevant for purposes of substantiating the Claim.

27.2 Change Dispute. A Party shall provide written notice to the other Party of any dispute or disagreement that such Party may have regarding a request for a Change or a notice of a Change given by either Party ("Change Dispute"), which notice shall contain such Party's position with respect to such Change Dispute (the "Change Dispute Notice"). Such Party shall provide the Change Dispute Notice to the other Party no earlier than fifteen (15) Days after such Party (a) submitted a notice of Change without having received either (i) a written response from the other Party or (ii) a response from the other Party regarding a notice of Change that is unsatisfactory to such Party or (b), in the case of Section 9.2, Contractor has received from Owner a request for a Change that Contractor does not believe conforms to the requirements of Section 9.2, or a dispute otherwise arises out of Section 9.2.

27.3 Resolution by Negotiation.

(a) As an express condition precedent to commencement of any further proceedings with respect to a Claim (except as may be provided under any applicable lien statute), the Party making such Claim shall notify the other Party's Project Director in writing of such Claim. The Contractor's Project Director and the Owner's Project Director shall meet within thirty (30) Days of receipt of the written notice of such Claim for the purpose of attempting to resolve the Claim.

(b) If, after the Contractor's Project Director and the Owner's Project Director meet, the Claim remains unresolved or if no such meeting takes place for any reason within such thirty (30) Day period, then an executive vice president (or equivalent) of (i), in the case of Contractor, each Consortium Member (unless otherwise agreed by the Consortium Members) and (ii), in the case of Owner, each of SCE&G and Santee Cooper (unless otherwise agreed by them) shall meet to attempt to resolve such Claim, as applicable, within fifteen (15) Days from the end of such thirty (30) Day period.

(c) If the Claim remains unresolved after the fifteen (15) Day period described in Section 27.3(b) and the Parties have not mutually agreed in writing to mediate such Claim, then:

(i) with respect to a Claim that exceeds the Threshold Amount, either Party shall have the right to proceed to litigation of such Claim in a court of competent jurisdiction pursuant to Section 27.7; and

(ii) with respect to a Claim that meets or falls below the Threshold Amount, such Claim shall be resolved pursuant to Section 27.5.

(d) The Parties agree to make a diligent, good faith attempt to resolve a Claim as expeditiously as reasonably possible as provided in this Section 27.3.

27.4 Mediation.

(a) The Parties may mutually agree in writing to endeavor to resolve a Claim by mediation which, unless the Parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Procedures of the AAA in effect at the time of the mediation. A request for mediation shall be mutually filed in writing by the Parties with the AAA. If the mediation has not concluded within sixty (60) Days after its commencement, then, as applicable:

(i) with respect to a Claim that exceeds the Threshold Amount, either Party shall have the right to proceed to litigation of such Claim in a court of competent jurisdiction pursuant to Section 27.7; and

(ii) with respect to a Claim that meets or falls below the Threshold Amount, such Claim shall be resolved pursuant to Section 27.5.

(b) The Parties shall share the mediator's fee and any AAA filing fees equally. The mediation shall be held in Charlotte, North Carolina, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements pursuant to Section 27.7.

27.5 Arbitration of Claims Falling Below the Threshold Amount.

(a) The Parties agree that any Claim meeting or falling below the Threshold Amount ("Arbitrable Claim") that is not resolved pursuant to Section 27.3 or 27.4 shall be submitted to final and binding arbitration for resolution pursuant to this Section 27.5 and in accordance with the Construction Industry Arbitration Rules of the AAA in effect at the time of the arbitration, except as modified by this Section 27.5 or otherwise agreed by the Parties.

(b) Unless the Parties otherwise mutually agree in writing, the arbitral panel ("Arbitral Panel") shall consist of three (3) people. Within ten (10) Days after the expiration of the fifteen (15) Day period described in Section 27.3(b), each Party shall give written notice of its selection of a person to serve as a member of the Arbitral Panel ("Member"), who shall have no less than ten (10) years of experience in the litigation of complex disputes including preferably experience in the power plant construction industry. If a Party fails to notify the other Party of the selection of its Member within such fifteen (15) Day period, then such Member shall be appointed by the AAA. Within thirty (30) Days after the selection of the Members of the Arbitral Panel, the Members shall mutually agree in writing on their nomination of two (2) persons to serve as the chairman of the Arbitral Panel, who shall be practicing attorneys validly licensed to practice law in a jurisdiction in the United States and/or retired judges, and who shall have no less than twenty (20) years of experience in the litigation of complex disputes including preferably experience in the power plant construction industry (the "Chairman"). (References herein to "Member" shall include the Chairman unless the context otherwise requires.) The Members shall then select one of such nominated persons to serve as the Chairman. In the event that the Members do not mutually agree on the person to serve as the Chairman within such thirty (30) Day period, each Member shall submit its nominated person to AAA, and the AAA shall decide the nominee to serve as the Chairman.

(c) It being imperative that all Members of the Arbitral Panel be neutral, act impartially, and be free from any conflict of interest, the Parties shall select such persons on the basis that the Members and the Chairman shall:

(i) have no interest financial or otherwise in either Party nor any financial interest in this Agreement except for payment of its fees and expenses as provided herein;

(ii) not previously have been employed as a consultant or otherwise by either Party, unless any such relationship has been disclosed in writing and approved by the Parties;

(iii) have disclosed in writing to the Parties and each other Member and the Chairman as applicable, before being selected and to his or her best knowledge and recollection, any professional or personal relationships with any director, officer or employee of either Party;

(iv) not, for the duration of the Arbitral Panel, be employed as a consultant or otherwise by either Party, except as may be agreed in writing by the Parties, the other Members and the Chairman;

(v) not give advice to either Party or its Personnel concerning the conduct of this Agreement, other than in accordance with this Agreement;

(vi) not have any ex-parte communications with either Party at any time after their selection pursuant to Section 27.5(b);

(vii) not, while a Member or Chairman, as applicable, enter into discussions or make any agreement with either Party regarding employment by any of them, whether as a consultant or otherwise, after ceasing to act as a Member or Chairman, as applicable; and

(viii) treat the details of this Agreement and all the Arbitral Panel's activities and hearings as private and confidential, and not publish or disclose them without the prior written consent of the Parties.

(d) Each Party shall be responsible for one-half of the fees and expenses of the Arbitral Panel, unless the Arbitral Panel includes an award of fees and expenses in the award. Contractor shall not include such fees and expenses in any amounts invoiced to Owner under this Agreement.

(e) Either Party shall be entitled to have any third party join into any proceedings hereunder as a party thereto under this Section 27.5. A Party may fully defend against any proceedings hereunder, provided that a Party shall not be entitled to make a counterclaim against the other Party unless the counterclaim arises out of the occurrence that is the subject of the pending Arbitrable Claim.

(f) The Arbitral Panel shall be governed by the provisions of this Agreement and the governing Law, and shall not be entitled to award any punitive, special, indirect, penal, incidental or consequential loss or damages.

(g) The Parties shall promptly provide the Arbitral Panel with such additional information and access to such facilities and Personnel as the Arbitral Panel may require for purposes of resolving any submitted Arbitrable Claim. The Arbitral Panel shall use reasonable efforts to resolve any submitted Arbitrable Claim as promptly as reasonably practicable and in any event within sixty (60) Days of the appointment of the Chairman of an Arbitral Panel where the amount in controversy is less than five million dollars (\$5,000,000) (per claim for monetary relief) or where a schedule dispute (per Contractor claim for schedule relief) is less than thirty (30) Days, or within one hundred eighty (180) Days of the appointment of the Chairman of an Arbitral Panel (or such other number of Days as may be proposed by the Arbitral Panel and accepted by both Parties (which acceptance shall not be unreasonably withheld)) where the amount in controversy is five million dollars (\$5,000,000) (per claim for monetary relief) or more or where the schedule dispute (per Contractor claim for schedule relief) is thirty (30) Days or more. Notwithstanding the foregoing, if the Parties mutually agree to a deadline extension or the Chairman determines that it is not feasible to resolve the Arbitrable Claim within the above listed deadlines, then a deadline may be extended to provide additional time to resolve such Arbitrable Claim; provided, that the duration of any such extension shall be set taking into account the agreed upon principle that disputes are to be resolved as expeditiously as possible. The Parties expressly agree that the Arbitral Panel shall have no power to consider or award any form of damages or remedies barred by this Agreement.

(h) The decision of the Arbitral Panel shall be issued in a writing that sets forth the Arbitral Panel's reasoned decision. The Arbitral Panel shall not be entitled to deviate from the construct, procedures or requirements of this Agreement. In the absence of bias, fraud, or willful misconduct by an arbitrator, any decision rendered by the Arbitral Panel in any arbitration shall be final and binding upon the Parties under the United States Arbitration Act 9 U.S.C. §§ 1 et seq., and judgment thereon may be entered in the court described in Section 27.7.

27.6 Exclusive Resolution Procedures; Equitable Remedies. The procedures specified in this Article shall be the sole and exclusive procedures for the resolution of Claims (except for lien claims which are governed by statute); provided, however, that, notwithstanding anything in this Article to the contrary, a Party may file a complaint in the court described in Section 27.7 to seek injunctive relief, sequestration, garnishment, attachment, or an appointment of a receiver. Despite such actions, the Parties shall continue to participate in good faith in and be bound by the dispute resolution procedures specified in this Article.

27.7 Consent to Jurisdiction. The Parties agree to the exclusive jurisdiction of the United States District Court for the Southern District of New York or, if such court does not have jurisdiction of the matter, the courts of the State of New York located in the City and County of New York, for any legal proceedings that may be brought by a Party arising out of or in connection with this Agreement or for recognition or enforcement of any judgment or settlement agreement. By execution and delivery of this Agreement, each Party accepts, generally and

unconditionally, the jurisdiction of the aforesaid court for legal proceedings arising out of or in connection with this Agreement. Each Party hereby waives any right to stay or dismiss any action or proceeding under or in connection with this Agreement brought before the foregoing court on the basis of forum non-conveniens or improper venue.

27.8 Continuation of Work. Pending the final resolution of any Claim, Contractor shall proceed diligently with the performance or provision of the Work and its other duties and obligations and Owner shall continue to compensate Contractor as set forth under this Agreement without diminution of effort; provided that Contractor is being compensated for the Work pursuant to the terms of this Agreement, including but not limited to the provisions of Article 8 and provided that the Parties agree that such duties and obligations can be safely and prudently performed.

ARTICLE 28 – NOTICES

All notices, communications, and approvals required or permitted to be given hereunder shall be in writing and shall be valid and sufficient if delivered in person or dispatched by certified mail (return receipt requested), postage prepaid, in any post office in the United States or by any national overnight express mail services (return receipt requested), and addressed as follows:

If to Owner:

South Carolina Electric & Gas Company
Attn: President
Mail Code 190
Columbia, SC 29218
Telephone No.: 803-217-8097
Facsimile No.: 803-217-9336

South Carolina Public Service Authority
Attn: Chief Operating Officer (M602)
One Riverwood Drive
P.O. Box 2946101
Moncks Corner, SC 29461-6101
Telephone No.: 843-761-4087
Facsimile No.: 843-761-7037

With a copy to:

South Carolina Electric & Gas Company
Attn: General Counsel
Mail Code 190
Columbia, SC 29218
Telephone No.: 803-217-8634
Facsimile No.: 803-217-9336

Execution Version

Confidential Trade Secret Information—Subject to Restricted Procedures

South Carolina Public Service Authority
Attn: General Counsel (M603)
One Riverwood Drive
P.O. Box 2946101
Moncks Corner, SC 29461-6101
Telephone No.: 843-761-7007
Facsimile No.: 843-761-7037

If to Westinghouse:

Westinghouse Electric Company, LLC
Attn: Daniel Lipman
4350 Northern Pike
Monroeville, PA 15146
Telephone No.: (412) 374-6920
Facsimile No.: (412) 374-6677

With a copy to:

Westinghouse Electric Company, LLC
Attn: General Counsel
4350 Northern Pike
Monroeville, PA 15146
Telephone No.: (412) 374-6177
Facsimile No.: (412) 374-6122

If to Stone & Webster:

Stone & Webster, Inc.
Attn: Ed Hubner
3 Executive Campus
Cherry Hill, NJ 08002
Telephone No.: (856) 482-4178
Facsimile No.: (856) 482-3155

with a copy to:

Stone & Webster, Inc.
Attn: E.K. Jenkins
E&C Division Counsel
100 Technology Center Drive
Stoughton, MA 02072
Facsimile No.: (617) 589-1322

or to such other address, attention or facsimile number as such Party to whom such notice is to be addressed shall have hereafter furnished to the other Party in writing as provided in this Article.

Notwithstanding the foregoing, any routine correspondence (as further defined in the Project Execution Plan) shall be sent to the appropriate project management and personnel that may be agreed upon by the Parties. Copies of such routine correspondence shall not be routed to the persons listed above.

ARTICLE 29 – ASSIGNMENT

Neither Party shall assign this Agreement in whole or in part without the prior written consent of the other Party. If any assignment by any Party of this Agreement or any right, interest or obligation therein requires the consent of, or notice to, any Government Authority, including the NRC, then such Party shall not effect such assignment without such consent of, or notice to, such Government Authority.

ARTICLE 30 – WAIVER

The failure of either Party to enforce at any time any of the provisions of this Agreement shall not be construed as a waiver of such provision nor shall not in any way affect the validity of this Agreement or the right of either Party to enforce each and every provision.

ARTICLE 31 – MODIFICATION

No waiver, modification, or amendment of any of the provisions of this Agreement shall be binding unless it is in writing and signed by duly authorized representatives of both Parties.

ARTICLE 32 – SURVIVAL

The Parties agree that the provisions of Article 15 – Indemnity, Article 17 – Limitation of Liability, Article 19 – Proprietary Data, Article 27 – Dispute Resolution, Section 22.2(e) – Continuation of Work by a Qualified Entity, and Section 25.4 –Right to Audit, this Article and any other terms and conditions of this Agreement that are expressly stated to survive or limiting the liability of Contractor shall survive termination, cancellation or expiration of this Agreement. Any liability and insurance protections afforded a Party hereunder shall apply during the Work and thereafter, and shall survive termination, cancellation or expiration of this Agreement, subject to time limitations provided for in this Agreement.

ARTICLE 33 – TRANSFER

Prior to the removal of any Equipment furnished hereunder from the Facility, except temporarily for repair or permanently for disposal, Owner shall provide Contractor with written assurances from the transferee of limitation of and protection against liability following the proposed removal or transfer at least equivalent to that afforded Contractor and Contractor Interests under the provisions of this Agreement. Removal or transfer contrary to the provisions of this Article shall, in addition to any other legal or equitable rights of Contractor, make Owner the indemnitor

of Contractor and Contractor Interests against any liabilities incurred by Contractor and Contractor Interests in excess of those that would have been incurred had no such transfer taken place.

ARTICLE 34 – GOVERNING LAW; WAIVER OF JURY TRIAL; CERTAIN FEDERAL LAWS

34.1 Governing Law. The validity, construction, and performance of this Agreement shall be governed by and interpreted in accordance with the laws of the State of New York, without giving effect to the principles thereof relating to conflicts of laws except Section 5-1401 of the New York General Obligations Law; provided, however, that nothing in this Agreement shall seek to alter the rights, responsibilities and limitations applicable to Santee Cooper under the laws of the State of South Carolina.

34.2 Waiver of Jury Trial. EACH PARTY HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT.

34.3 Certain Federal Laws. In the performance of Work under this Agreement, Contractor and its Subcontractors shall comply with applicable Law, including provisions of Executive Order 11246, as amended, relating to equal opportunity and nonsegregated facilities, the Fair Labor Standards Act of 1933, the Occupational Safety and Health Act of 1970, and the requirements of the rules, regulations, orders, bulletins and interpretations of the NRC, and with the Laws as set forth in Exhibit S, to the extent applicable to Contractor or Subcontractors. Contractor further agrees to comply with, and agrees to require Subcontractors that are subject to such requirements to comply with, Owner's Government Contracting Programs requirements as specified in 13 CFR 125, 48 CFR 52.219-8, and 48 CFR 52.219-9.

ARTICLE 35 – RELATIONSHIP OF OWNER AND CONTRACTOR

Contractor is an independent contractor and nothing contained herein shall be construed as creating (i) any relationship between Owner and Contractor other than that of owner and independent contractor, (ii) any relationship whatsoever between Owner and Contractor's employees or Subcontractors or (iii) a fiduciary relationship between Contractor and Owner. Neither Contractor, nor any of its employees, are or shall be deemed to be employees of Owner.

ARTICLE 36 – THIRD PARTY BENEFICIARIES

Except as expressly set forth in this Agreement, the provisions of this Agreement are intended for the sole benefit of Owner and Contractor and each Consortium Member, and the Parties do not intend to create any other third party beneficiaries or otherwise create privity of contract with any other Person.

ARTICLE 37 – REPRESENTATIONS AND WARRANTIES

37.1 Representations and Warranties of Contractor. Each Consortium Member hereby represents and warrants to Owner as follows:

(a) Due Organization of Consortium Member.

(i) Stone & Webster represents and warrants that it is duly organized, validly existing and in good standing under the laws of the State of Louisiana and has the requisite power and authority to own and operate its business and properties and to carry on its business as such business is now being conducted and is duly qualified to do business in the State of South Carolina and in any other jurisdiction in which the transaction of its business makes such qualification necessary.

(ii) Westinghouse represents and warrants that it is duly organized, validly existing and in good standing under the laws of the State of Delaware and has the requisite power and authority to own and operate its business and properties and to carry on its business as such business is now being conducted and is duly qualified to do business in the State of South Carolina and in any other jurisdiction in which the transaction of its business makes such qualification necessary.

(b) Due Authorization of Consortium Member; Binding Obligation. Consortium Member has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder, and the execution, delivery and performance of this Agreement by Consortium Member has been duly authorized by the necessary action on the part of such Consortium Member; this Agreement has been duly executed and delivered by such Consortium Member and is the valid and binding obligation of such Consortium Member enforceable in accordance with its terms.

(c) Non-Contravention. The execution, delivery and performance of this Agreement by Consortium Member and the consummation of the transactions contemplated hereby do not and shall not contravene any applicable Law or the organizational documents of such Consortium Member and do not and shall not conflict with or result in a breach of or default under any indenture, mortgage, lease, agreement, instrument, judgment, decree, order or ruling to which such Consortium Member is a party or by which it or any of its properties is bound or affected.

(d) Consortium Agreement. The Consortium Members have entered into an agreement setting forth their consortium arrangements for the performance of this Agreement and their sharing of liabilities with respect thereto.

37.2 Representations and Warranties of SCE&G and Santee Cooper. Each of SCE&G and Santee Cooper hereby represents, warrants and covenants to Contractor as follows:

(a) Due Organization of Owner. It is duly organized, validly existing and in good standing under the laws of the State of South Carolina and has the requisite power and authority to own and operate its business and properties and to carry on its business as such

business is now being conducted and is duly qualified to do business in State of South Carolina and in any other jurisdiction in which the transaction of its business makes such qualification necessary.

(b) Due Authorization of Owner; Binding Obligation. Its execution, delivery and performance of this Agreement has been duly and effectively authorized by the requisite action on the part of its governing board. This Agreement constitutes its legal, valid and binding obligations, enforceable against it in accordance with its terms, except as limited by applicable bankruptcy, insolvency, reorganization, moratorium or other Laws affecting the rights of creditors generally and by general principles of equity.

(c) Non-Contravention. Its execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby do not and shall not contravene any applicable Law or organizational documents or do not and shall not conflict with or result in a breach of or default under any indenture, mortgage, lease, agreement, instrument, judgment, decree, order or ruling to which it is a party or by which it or any of its properties is bound or affected.

On the Effective Date, Santee Cooper shall provide a letter to Contractor making each of the representations set forth in this Section 37.2 on its own behalf as well as a representation that Santee Cooper has appointed SCE&G as its agent pursuant to the Limited Agency Agreement, which is attached hereto Exhibit V, for all purposes under this Agreement, with the power and authority to bind Santee Cooper to its obligations herein, subject to the limitations specifically set forth in the Limited Agency Agreement. In such letter, Santee Cooper shall also agree to notify Contractor promptly in writing if there is any change in the limits of SCE&G's authority set forth in such Limited Agency Agreement.

ARTICLE 38 – MISCELLANEOUS PROVISIONS

38.1 Rights Exclusive. The rights and remedies of Owner or Contractor as set forth in this Agreement shall be the exclusive rights or remedies of the Parties. The limitations of liability, waivers, indemnities, extension of insurances and other liability protection provided herein for the benefit of Contractor shall also apply for the benefit of Contractor Interests and shall apply irrespective of the basis of such claim, whether arising at contract (including breach warranty, indemnity, etc.), tort or otherwise, and regardless of fault, negligence or strict liability.

38.2 Severability. If any provision of this Agreement or the application of this Agreement to any Person or circumstance shall to any extent be held invalid or unenforceable by a court of competent jurisdiction or arbitrator under Article 27, then (i) the remainder of this Agreement and the application of that provision to Persons or circumstances other than those as to which it is specifically held invalid or unenforceable shall not be affected, and every remaining provision of this Agreement shall be valid and binding to the fullest extent permitted by Laws, and (ii) a suitable and equitable provision shall be substituted for such invalid or unenforceable provision in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision.

38.3 Entire Agreement. This Agreement contains the entire agreement and understanding between the parties as to the subject matter of this Agreement, and merges and supersedes all prior agreements, commitments, representations, writings and discussions between them other than the Existing Confidentiality Agreement, which shall remain in effect for the purposes set forth in Section 19.2(c)(i). Neither of the Parties shall be bound by any prior obligations, conditions, warranties, or representations with respect to the subject matter of this Agreement.

38.4 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Execution Version

Confidential Trade Secret Information—Subject to Restricted Procedures

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the date first above written.

**SOUTH CAROLINA ELECTRIC & GAS
COMPANY**, for itself and as agent for South
Carolina Public Service Authority

By: Name: William B. TimmermanTitle: Chairman and CEO

STONE & WEBSTER, INC.

By: Name: David P. BarryTitle: Executive Vice President

WESTINGHOUSE ELECTRIC COMPANY LLC

By: Name: Aris CandrisTitle: Senior Vice President

EXHIBIT A
Scope of Work / Supply
And Division of Responsibility

Capitalized terms used herein and not otherwise defined herein have the meanings assigned to such terms in the Agreement to which this Exhibit A is appended.

A.1 Phase I

Phase I of the Work will consist of Contractor's project management, project controls, engineering, supply chain, quality, administrative and other services required by Owner to support continuation of design work (other than design work performed under the NuStart program), and to procure long lead time equipment and perform Site specific engineering, assessments and activities. The Work in Phase I will also include the project initiation activities necessary to execute the entire Scope of Work and the project activities necessary prior to Full Notice to Proceed. Phase I will include any construction mobilization, Site preparation and development, and other activities authorized by Owner prior to Full Notice to Proceed. As such, Contractor's organization will be established as the project develops and will grow as necessary to execute the Phase I activities for a smooth transition into Phase II following Full Notice to Proceed.

The activity descriptions associated with Phase I are provided below. The initial functional project staffing for Phase I of the Work will be a subset of the project organization provided in Exhibit B. Through Phase I the organization will grow as required to be fully staffed at Full Notice to Proceed.

A.1.1 Project Management and Administration

The project management Work scope includes the management of all ongoing activities during the Phase I effort and to facilitate the transition for performance of the Work to Full Notice to Proceed. Phase I of the Work includes:

- Project management and overall guidance and direction of all Work;
- Preparation of the project specific Quality Assurance Program and project specific procedures to implement the Agreement;
- Preparation of the integrated Project Schedule and monitoring of task plans, for the Scope of Work;
- Coordination and oversight of the long lead procurement activities to support the Project Schedule;
- Management of the modules to be fabricated and delivered in support of the Project Schedule;
- Coordination of the Information Management System (as defined in A.1.3.) interface and document control activities;
- Primary Owner interface between Westinghouse and Stone & Webster;
- Monthly consolidated (Contractor) project status reports;
- Monthly status review meetings;

- Project controls;
- Contract administration; and
- Administrative and clerical support for project activities.

Contractor's Project Director will provide oversight of all project activities. Stone & Webster will be performing Site specific activities including development of Site specific inputs to the Project Schedule, preliminary and detailed engineering, preliminary design to integrate and convert Site temporary facilities during construction to permanent facilities, and Site geotechnical review to assess design and construction. Construction planning activities will be conducted for Site transportation and logistics, and Site excavation.

An integrated Project Schedule will be used to coordinate activities and interfaces during the engineering, procurement and construction activities. The project organization will develop a Level 1 master procurement and construction schedule in consultation with Owner. The Project Schedule will state the engineering schedule required to support the procurement and construction schedule.

A core project management team will be established for developing and administering controls and processes for the AP1000 Nuclear Power Plant (herein, the "AP1000" or "AP1000 Plant") engineering, procurement and construction. The team will be built during Phase I. The project organization is shown in Exhibit B. Utilizing this core team for support, a dedicated individual referred to as Contractor's Project Director will execute the project activities to complete Site specific engineering, perform initial procurement and prepare the Site for construction.

A.1.2 Supply Chain Management

Contractor will provide services pertaining to early procurement activities necessary for support of the Project Schedule. Long lead items will be identified and ordered in advance of the Full Notice to Proceed, to properly support the Project Schedule. Project personnel will be assigned to ensure the supply of the key and critical plant equipment will accommodate the schedule requirements. These persons may be shared resources with other projects.

The early procurement activities will include, but not be limited to, the following Equipment:

1. Steam Generators;
2. Control Rod Drive Mechanisms;
3. Containment vessel plate;
4. Reactor vessel;
5. Fuel Transfer Tube;
6. Reactor Coolant System Main Loop Piping;

7. Reactor vessel internals;
8. Pressurizer;
9. Reactor coolant pumps; and
10. Modules.

In addition to the procurement activities for the Equipment identified above, the other equipment that is required for the AP1000 will need to be evaluated for what is required, when it is needed in the schedule, and where it is needed.

Supply chain management will provide the following services:

- Identify the existing suppliers comprising the supply base.
- Evaluate the supply base to determine if they have the capabilities and capacities to produce the quantities that are required. In some cases, if the supply is dependent on material or sub-suppliers, this evaluation must examine sub-tier supplier's capacity as well.
- Identify any limitations that prevent the supply base from producing the required capacities (gaps).
- Negotiate supply agreements for equipment that has few qualified suppliers, critical supply schedules, or may have resource limitations to lock in capacities. To the extent possible, single source procurements would be avoided.
- Identify procurement items that are required to support agreed upon schedule and develop a supply plan linked to the schedule.
- Evaluate supplier bids, terms and conditions negotiated, and purchase orders executed in support of long lead procurement.
- Review and negotiate long lead Equipment proposals for best terms and place orders to meet the Project Schedule.
- Request engineering to assist or evaluate requirements from Equipment suppliers during fabrication as needed.
- Value stream map the supply chain in cooperation with key suppliers to develop a sourcing plan to balance supply and demand.
- Identify supply chain risks and develop and implement risk mitigation plans.
- Conduct initial kick-off meetings with selected suppliers to assure all requirements are understood and suppliers are ready to implement appropriately.
- Participate in periodic supplier meetings with long lead material sub-suppliers to assure requirements are understood and are being implemented consistent with order requirements.
- Provide frequent follow-up and communications with suppliers to ensure progress consistent with plan and schedule.
- Identify supply issues and execute timely corrective action when required.
- Provide supply status to the project team.
- Plan and coordinate logistics and transportation for delivery to the Site.

Engineering

In support of supply chain management, the following engineering services will be provided:

- Develop and provide purchase requisitions to support the procurement process.
- Develop or review fabrication and supply (i.e. concrete) specifications.
- Develop or review supplier surveillance plans.
- Provide a technical review of supplier documentation.
- Disposition non-conformances as required.
- Provide engineering related to changes resulting from manufacturing requests that may affect design, form, fit or function.
- Provide engineering oversight at the supplier's facilities as required.
- Provide engineering oversight at the sub-tier vendor's facilities as required.
- Interface with Owner on technical or design issues or questions.

Quality Assurance

In support of supply chain management, the following quality engineering services will be provided:

- Review and approve design specifications related to procurement of Equipment.
- Develop additional quality assurance processes and procedures to support procurement and storage.
- Interface with Owner in support of Owner audits/oversight.
- Interface with Owner on quality program related concerns and questions.
- Address Owner questions/comments concerning material quality.
- Coordinate and process issue reports and non-conformances in accordance with the corrective action system.
- Apparent cause/root cause analysis as required for non-conformances.
- Project specific quality assurance oversight as required.
- Administer and perform project related self-assessments as required.
- Coordination of the Witness Point and Hold Point program.
- Preparation of evaluation/audit checklists.
- Preparation of supplier audit plan to meet quality requirements.
- Audit notification to suppliers.
- On-Site (supplier) evaluations or audits.
- Generate and issue supplier surveillance or audit reports and follow-up of identified corrective action.
- Make required entries into the Contractor qualified supplier's list.
- Archive audit plans, reports, responses.
- Review and approve procurement documents.
- Review and approve supplier procedures.
- Attend readiness review pre-production meeting as required.
- Perform supplier quality oversight.

- Execute witness and surveillance program (Non-Destructive Examination/heat treat/inspection).
- Follow/verify resolution of identified supplier corrective actions requests.
- Support Owner surveillance at supplier facility as required.
- Review and approve data package (oversight).
- Perform final release for shipment (oversight).
- Transmit/archive data packages (if required).

A.1.3 Information Management System

An information management system ("Information Management System") will be developed to store AP1000 information related to the Facility. This system will provide the following:

- Select control and review of material, documentation and data that are to be retained as project records.
- Manage formal customer or partner correspondence, and any contractual records.
- Electronic data storage using a configuration controlled process for retrieval and searching.
- Management of interface information between Contractor and Owner or Subcontractor organizations.

A.1.4 Module Management

A module management plan will document the detailed work to be accomplished going forward to ensure the efficient completion of module planning, procurement, delivery, storage, Site assembly, outfitting and installation. A list of structural modules and mechanical modules for the AP1000 Plant will be defined.

The integrated schedule will be reviewed to examine the complete schedule logic for each individual module associated with the AP1000 Plant. A backward-pass through the schedule will be performed "starting" with the module installation date. Working backward, the logic and durations will be examined and independently confirmed to the current design status. A priority will be established for the modules based upon:

- Early installation in the plant.
- High degree of complexity (e.g., containing multiple types of Equipment or commodities).
- Modules that contain long lead Equipment.
- Modules that are assembled on Site from sub-assemblies.

Module fabrication planning will be conducted with selected suppliers determined to possess the requisite technical expertise, facilities, quality and commercial capabilities to assist in the design of modules and to supply modules for the AP1000. Following this

planning, the procurement, fabrication, delivery and on Site construction activities will be defined in the Project Schedule.

A.1.5 Site Specific Scope

Phase I of the Work includes Site specific (non-NuStart) design and Site development activities prior to AP1000 construction. The Site specific activities will include development of the Project Schedule, preliminary and detailed engineering, scheduling, preliminary design to integrate and convert Site temporary facilities during construction to permanent facilities, and Site geotechnical review to assess design and construction. Construction planning activities will be conducted for Site transportation and logistics, and Site excavation. Mobilization of construction and Site preparation and development activities will be performed as necessary to meet schedule.

A.1.5.1 Preliminary Site Specific Engineering

The preliminary Site specific engineering includes the engineering required to define layout, quantities, sizes and costs for the Site and Owner-specific aspects of the design. This is needed to modify the standard AP1000 schedule to develop the definitive Project Schedule. This work is to include:

- Evaluation of the Site or review of existing evaluations for development of design criteria for Site specific systems, structures and components including those that contain undergrounds (circ water, fire loop, underground duct banks, storm drains, waste water, potable water, tanks with underground piping, sanitary sewage, cathodic protection);
- Preparation of conceptual designs;
- Development of dimensioned layout drawings and preliminary foundation cross-sections;
- System and component sizing calculations which support conceptual designs;
- Key Equipment and component specifications for conceptual designs;
- Preparation of P&ID's which support conceptual designs;
- Preparation of preliminary structural drawing information to define structural commodities;
- Preparation of preliminary piping drawings for large bore piping for quantity assessments;
- Electrical one-line drawings for conceptual designs;
- Control logics;
- Preparation of bid packages for key components;
- Bid evaluations and vendor selection for most key components; and
- Review of vendor design packages.

A.1.5.2 Detailed Site Specific Engineering

The detailed Site specific engineering includes that portion of the Site specific engineering that is required to be complete to support the start of pre-construction and construction activities. This work is to include:

- Completion of Site preparation plans, Site layout and initial Site grubbing/grading plans/excavation;
- Completion of engineering for underground systems and other systems required to support construction;
- Completion of engineering to support module development based on the module and procurement lead times;
- Completion of engineering for Equipment and commodities to support procurement of long lead time items needed to support installation schedule requirements;
- Site heavy haul load evaluations, engineering of haul foundations, hardstands for cranes, module erection pad foundations;
- Site infrastructure design including all roads(Parr road, construction access road, Facility access road, discharge structure road, switchyard road, Hwy 213 intersection warehouse receiving road, etc), rail, construction water, construction fire protection and construction power; and
- Development of specifications and procurement of systems and commodities to support construction: underground commodities for undergrounds; water treatment facilities, batch plant; temporary electrical power design and components and other items identified in the construction execution plan.

A.1.5.3 AP1000 Envelope Evaluation

The scope of this package is to perform an assessment of Site specific parameters and to identify any work scope impacts associated with siting the standard design and establishing the design criteria for the Site specific design. This work to include the assessment of:

- Site meteorological parameters;
- Site Safe Shutdown Earthquake (SSE)/Ground Motion Response Spectra (GMRS) safe shutdown earthquake and design response spectra ;
- Site soil and rock properties;
- Site groundwater conditions;
- Water supply properties;
- State and local Laws and required Government Approvals;
- Impacts of nearby facilities/utilities;
- Site flood history; and
- Soil stabilization techniques.

A.1.5.4 Site Geotechnical Review - Design Assessment

The scope of this package is to perform an assessment of the Site specific geotechnical parameters based on data collected by Owner and Contractor. The impacts on the standard design and the design criteria for the Site specific design will be defined. This work shall include:

- Assessment of Site soil and rock properties, including dynamic properties and load bearing capacities;
- Site seismic analyses: Safe Shutdown Earthquake (SSE)/Ground Motion Response Spectra (GMRS) and design response spectra and soil structure interaction validation, liquefaction potential, stability of excavations, slopes and dam embankments;
- Assessment of Site groundwater conditions: design bases for hydrostatic pressure and dewatering of excavations;
- Assessment of the adequacy of existing information and identification of any additional information; and
- Development of related construction requirements, guidelines, and plans.

A.1.5.5 Regional Infrastructure Assessment

The scope is to perform an assessment of the infrastructure required to support the construction of an AP1000 Nuclear Power Plant and to define the impacts on construction, modularization and the ability to transport fabrications to the Site. This work shall include:

- Railroad access;
- Highway road access;
- Available utilities (water/sewage/ power);
- Medical facilities;
- Fire fighting facilities;
- Available housing;
- Schools;
- Financial facilities;
- Regional communications;
- Local governments; and
- News outlets.

A.1.5.6 Project Specific Equipment & Material Logistics Deployment Model (including Transportation and Logistics Plan)

The scope of this activity identifies attributes to be evaluated and develops plans for the transportation of heavy equipment and modules. Input for this task includes the results of the evaluations performed as part of the regional assessment. This task defines the following:

- Module / large components shipping routes;
- Highway capability (material/module shipments);
- Waterway / barge availability (material/module shipments);
- Bridge capacities (material/module shipments);
- Overhead electrical (shipping routes);
- Heavy haulers / cranes; and
- Railroad capabilities.

A.1.5.7 Site Specific Procurement Plan

The scope of work for this area will include the investigation and development of Site specific changes to the specifications for the Standard Plant needed to reflect Site specific and Owner requirements for the purchase of Equipment and commodities and to tailor procedures to reflect these requirements. This work shall include:

- Site description;
- Site transportation information;
- Owner specific contract requirements;
- Site security restrictions;
- Site access restrictions;
- Site prohibitions;
- Special environmental requirements; and
- Special state and local Laws.

A.1.5.8 Local Labor Survey

The scope of this survey is to perform an assessment of craft availability and training requirement needed to support the construction of the AP1000 Nuclear Power Plant.

Evaluate craft availability (all crafts)

- Dedicate a staffing team to focus on nuclear talent;
- Establish initial resource profile by discipline;
- Survey labor sources with advertisements and direct and indirect mailings to open and closed shops by craft discipline in the effected geographic radius; and
- Decide with Owner the formal project labor approach considering completion and safety incentives to draw and keep labor.